Washington, Wednesday, December 28, 1955

# TITLE 15—COMMERCE AND FOREIGN TRADE

# Chapter III-Bureau of Foreign Commerce, Department of Commerce

Subchapter B-Export Regulations [7th Gen. Rev. of Export Regs., Amdt. 47]

PART 373-LICENSING POLICIES AND RELATED SPECIAL PROVISIONS

Section 373.41 Nonferrous commodities, including ores, concentrates, or unrefined products is amended to read as follows:

§ 373.41 Nonferrous commodities, including ores, concentrates, or unrefined products—(a) [Reserved.]

(b) Nonferrous metal alloys, includang alloy scrap. Applications for licenses to export the nonferrous metal alloys, or alloy scrap, listed below, shall contain in the commodity description column of Form IT- or FC-419, a complete commodity description, including the percentage of each alloying element present or the recognized standard commercial brand or trade name of the commodity, such as is published in "Engineering Alloys" by the American Society for Metals, or as published in "Standard Specification" by the American Society for Testing Materials:

Sc	hedule
Commodity	B No.
Copper-base alloy ingots	644100
Nickel alloy scrap, including nickel-	
bearing stainless steel scrap	654502
Nickel-bearing cobalt scrap	664526

(c) Nickel alloy and nickel-bearing cobalt scrap-(1) Nickel alloy scrap, including nickel-bearing stainless steel scrap, Schedule B No. 654502. Evidence of commercial unsalability in the domestic market, as provided in subparagraph (3) of this paragraph, shall be submitted in support of applications to export (i) clean nickel alloy scrap, containing less than 50 percent nickel, (ii) contaminated nickel alloy scrap, (iii) nickel-copper alloy scrap (including monel) containing 75 percent or less nickel, and (iv) contaminated nickel-chromium-iron alloy scrap (nickel-bearing stainless steel scrap) containing up to 36 percent nickel with a minimum chromium content of 10 percent.

(2) Nickel-bearing cobalt scrap, Schedule B No. 664526. Applications for licenses to export clean cobalt scrap containing less than 50 percent nickel, and contaminated cobalt scrap shall be supported by evidence of commercial unsalability in the domestic market as provided in subparagraph (3) of this paragraph.

Note: For purposes of this section, material is considered to be contaminated when the contaminant can not be readily corted from the balance of the material.

(3) Evidence of commercial unsalability. As required in subparagraphs (1) and (2) of this paragraph, the exporter must submit evidence of commercial unsalability in the domestic market. This evidence may be in the form of a letter or other statement from the applicant, supplier, or persons to whom the scrap was offered for sale. Such evidence must be adequate to demonstrate that the scrap has been offered for sale without success in the normal domestic market at reasonable and competitive prices. It shall include, as a minimum, the names and addresses of the potential users to whom the scrap has been offered, the terms at which it has been offered, and the reason(s) for rejection of offers to sell.

(4) Commodities not licensed. Pure nickel scrap, clean nickel alloy scrap containing 50 percent or more nickel, clean nickel-chromium-iron alloy scrap (nickel-bearing stainless steel) containing up to 36 percent nickel with a minimum chromium content of 10 percent, and clean cobalt scrap containing 50 percent or more nickel, will not be considered for licensing.

(d) Copper ores, and concentrates, unrefined copper, refined copper, copper scrap, copper-base alloy scrap, and copper-base alloy ingots and other crude forms including remelt ingots-(1) General. License applications to export copper ores, concentrates, matte, and other unrefined copper, Schedule B No. 640100; refined copper in cathodes, billets, ingots, wire bars, and anodes and other crude forms, except copperweld rods, Schedule B No. 641200 (hereinafter referred to as refined copper), copper scrap (new and old), Schedule B No. 641300; copper-base alloy scrap (new and old), Schedule B No. 644000; and copper-base alloy ingots and other crude forms including remelt ingots, Schedule B No. 644100, will be

(Continued on next page)

COMIENIS	
Agricultural Marketing Service Rules and regulations: Mill: in Clarksburg, W. Va.,	Page
marketing area; correction— Raisins produced from raisin variety grapes grown in Cali- fornia: modification of mini-	9988
mum standards for packed Muscat raisins  Agniculture Department	9938
See Agricultural Marketing Service.  Civil Aeronautics Administra-	
tion	
Rules and regulations: Standard instrument approach procedures; alterations	9989
Civil Aeronautics Board Notices:	
Pacific Service mail rate case; prehearing conference	
Air ambulance service Queen Charlotte Airlines Ltd_	10013
Rules and regulations: Airman agency certificates	
Coast Guard Rules and regulations: Editorial changes and corrections in chapter	10009
Commerce Department Sec Civil Aeronautics Administra- tion; Foreign Commerce Bureau.	
Customs Bureau Rules and regulations:	
Articles for personal or house- hold use; conditionally free,	
hold use; conditionally free,	9993
Liability for duties; entry of im- ported merchandise; powers of attorney	9993
Defense Department See Navy Department.	
Federal Power Commission	
Notices: Puget Sound Power & Light Co.	
and Public Utility District No. 1 of Douglas County, Wash-	
ington; hearing	10012
Foreign Commerce Bureau Rules and regulations:	
Export regulations: licensing	
policies and related special	9925



Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Federal Register Division, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U. S. C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D. C.

ment Printing Office, Washington 25, D. C.

The Federal Register will be furnished by mail to subscribers, free of postage, for \$1.50 per month or \$15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D. C.

The regulatory material appearing herein is keyed to the Code of Federal Regulations.

The regulatory material appearing herein is keyed to the Code of Federal Regulations, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER, or the CODE OF FEDERAL REGULATIONS.

# CFR SUPPLEMENTS

(For use during 1955)

The following Supplement is now available:

General Index (\$1.25)

All of the Cumulative Pocket Supplements and revised books of the Code of Federal Regulations (as of January 1, 1955) are now available with the exception of Titles 1—3

Order from Superintendent of Documents, Government Printing Office, Washington 25, D. C.

# **CONTENTS**—Continued

Indian Affairs Bureau

Notices:

Osage Indian Funds; head- rights; redelegation of au- thority10013
Interior Department See Indian Affairs Bureau; Land Management-Bureau,
Interstate Commerce Commis-
sion Notices: Fourth section applications for relief 10013
Land Management Bureau Notices:
Arizona, proposed withdrawal and reservation of lands; correction

Alaska; public land order\_\_\_\_ 9988

## CONTENTS—Continued

Navy Department	Page
Rules and regulations: Miscellaneous amendments to chapter	9994
Small Business Administration Notices: Washington; declaration of dis- aster area	10013
Treasury Department See Coast Guard; Customs Bureau.	20020

# CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such

Buon.	
Title 7	Page
Chapter IX.	
Part 989	9988
Part 1009	9988
Title 14	
Chapter I.	
Part 50	9988
Chapter II.	
Part 609	9989
Title 15	
Chapter III.	
Part 373	9985
Title 19	
Chapter I:	
Part 8	9993
Part 10	9993
Title 32	-
Chapter VI.	
Part 720	9994
Part 725	9996
Part 750	10005
Part 751	10008
Part 753	10009
Title 43	
Chapter I.	
Appendix (Public land orders)	
1262	9988
Title 46	
	10000
Chapter I	<b>T0008</b>
T	

considered for approval in accordance with the procedures described below.

(2) Refined copper Schedule B No. 641200. License applications to export refined copper in cathodes, billets, ingots, wire bars and other crude forms (including anodes) made from domestic origin materials, or Canadian-origin copper scrap, copper-base alloy scrap, or copper-base alloy ingots and other crude forms including remelt ingots, will generally be denied. License applications covering the exportations of these refined copper materials made from foreign or commingled domestic and foreign origin materials, other than Canadianorigin copper scrap, copper-base alloy scrap, or copper-base alloy ingots and other crude forms including remelt ingots, shall include the following:

(i) Certification of foreign origin or commingled, origin. (a) Applications from non-producers of refined copper—Applications from non-producers covering refined copper made from materials, other than Canadian-origin copper scrap, copper-base alloy scrap, or copper-

base alloy ingots and other crude forms including remelt ingots, of foreign or commingled domestic and foreign origin materials shall be accompanied by a letter, addressed to the Bureau of Foreign Commerce, from the producer of the refined copper to the effect that (1) the refined copper proposed for export is refined from foreign origin copper other than Canadian-origin copper scrap, copper-base alloy scrap, or copper-base alloy ingots and other crude forms including remelt ingots; or (2) that an equivalent amount of foreign origin materials, other than Canadian-origin copper scrap, copper-base alloy scrap, or copper-base alloy ingots and other crude forms including remelt ingots, has been smelted and refined to replace in the domestic market the amount of domestic copper contained in the commingled copper proposed for export.

(b) Applications from producers of refined copper—Applications from producers of refined copper made of foreign or commingled (foreign and domestic origin) materials, other than Canadianorigin copper scrap, copper-base alloy scrap, or copper-base alloy ingots and other crude forms including remelt ingots, shall include the following certifi-

cation:

I (we) certify that I am (we are) the producer(s) of the refined copper covered by this license application and (1) that this refined copper was produced from foreign origin materials other than Canadian-origin copper scrap, copper-base alloy scrap, or copper-base alloy ingots and other crude forms including remeit ingots, or (2) that an equivalent amount of foreign materials, other than Canadian-origin copper scrap, copper-base alloy scrap, or copper-base alloy scrap, or copper-base alloy ingots and other crude forms including remeit ingots, has been smelted and refined to replace in the domestic market the amount of domestic copper contained in the commingled copper proposed for export.

(ii) Availability for export. One of the following certifications shall appear on each license application:

(a) Where materials are in possession of applicant the applicant shall execute and submit to the Bureau of Foreign Commerce the following certification:

I (we) certify that the copper materials described in this license application are in my (our) possession and will be available for export not later than December 31, 1955.

(b) (1) Where materials are not in possession of applicant, the applicant shall submit to the Bureau of Foreign Commerce the following certification from the producer of the materials:

I (we) certify that not later than De	
ber 31, 1955, I (we) shall supply to	
*************************	
(Name of applicant)	
	short
(Quantity in short tons)	
tons of	
(Type of copper material)	
in accordance with the terms of contract	ealo

(Contract number)

(2) All documents evidencing commitment of sale must be kept available for inspection, upon demand, by the Bu-

reau of Foreign Commerce for three

years from the date of receipt of the application, as shown on the Acknowledgment Card, Form IT- or FC-116.

(3) Applications not accompanied by the evidence of availability required by the provisions of this subparagraph, shall not be approved and should not be submitted.

(iii) Disclosure of foreign consumer. The foreign consumer shall be identified on the license application by the use of one of the following applicable statements:

The foreign consumer of the commodities covered by this application is the same as that shown in item 7 on this license application;

or if the foreign consumer is not the same as that shown in item 7:

The name and address of the foreign consumer is

- (iv) Toll or conversion agreements. Applications covering the exportation of refined copper produced in the United States under toll or conversion agreements from materials received from foreign sources are not subject to any of the above provisions of this paragraph. Where the license application covers refined copper produced from toll or conversion agreements, the applicant shall include the following certification on the license application:
- I (we) certify that the refined copper described in this license application was produced in the United States under toll or conversion contracts from materials received from foreign sources.
- (3) Copper ores, concentrates, matte, and other unrefined copper Schedule B No. 640100. License applications to export copper ores, concentrates, matte, and other unrefined copper of domestic origin or produced from domestic materials generally will be denied. However, where consideration of such applications is requested, the application shall be supported by documentation or other evidence showing any exceptional hardship as well as by the information set forth in subparagraph (2) (ii) and (iii) of this paragraph. With reference to the copper materials included in this paragraph, a foreign smelter, refiner, or processor may be identified as the consumer. License applications covering the exportation of these copper materials of foreign origin or produced from foreign material shall include in addition to the information set forth in subparagraph (2) (ii) and (iii) of this paragraph, the following:
- (i) Non-producers. Applications from non-producers covering the exportation of these materials of foreign origin or commingled foreign and domestic origin (or materials produced from materials of foreign origin or commingled foreign and domestic origin) shall be accompanied by a letter addressed to the Bureau of Foreign Commerce from the producer of the copper material to the effect that (a) the material proposed for export is of foreign origin or is produced from foreign origin materials; or (b) that an equivalent amount of foreign origin material has been imported to replace in the domestic market the amount of domestic copper material contained in the com-

mingled copper materials proposed for export.

- (ii) Producers. (a) Applications from producers of these copper materials of foreign or commingled foreign and domestic origin, (or produced from foreign or commingled foreign and domestic materials) shall include the following certification:
- I (we) certify that I am (we are) the producer(s) of the unrefined copper material covered by this licence application and that (1) this material was produced from foreign origin material, or (2) that an equivalent amount of foreign material has been imported to replace in the domestic market the amount of domestic copper material contained in the commingled copper material proposed for export.
- (b) The provisions of this subparagraph do not apply to exportations of materials included under Schedule B No. 640100 made for purposes of processing abroad where the resultant copper is to be returned to the United States. In such cases, details of the transaction shall accompany the application for an export license.
- (4) Copper scrap, copper-base alloy scrap, and copper-base alloy ingots and other crude forms including remelt ingots. (i) In order that the Bureau of Foreign Commerce may provide an equitable basis for distributing available export quotas for copper scrap (new and old) containing 40 percent or more copper. Schedule B No. 641300; copper-base alloy scrap (new and old) containing 40 percent or more copper, Schedule B No. 644000; and copper-base alloy ingots and other crude forms including remelt ingots, Schedule B No. 644100, applicants are required to submit to the Bureau of Foreign Commerce a Statement of Past Participation in Exports of these commodities on Form IT- or FC-821 in accordance with the procedure set forth in § 373.4. A separate report on Form ITor FC-821 shall be filed for each Schedule B number, broken down by countries of destination, and shall cover the quantity in Schedule B units of exports from the United States made during the fourth calendar quarter of 1953 and the calendar year 1954, where the total for such exports to all countries for each Schedule B number was \$5,000 or over for the five quarters. In preparing Form IT- or FC-821, the heading above items (c) and (d) shall be changed to read "4th quarter 1953" and the heading above items (e) and (f) shall read "calendar year 1954."
- (ii) License applications covering copper scrap (new and old) containing less than 40 percent copper, Schedule B No. 641300, or copper-base alloy scrap (new and old) containing any percentage of copper, Schedule B No. 644000, shall include information as to the copper and nickel content of the material.
- (5) Validity period. Licenses to export all materials covered by this paragraph will be issued for a validity period ending on the last day of the third month following the month during which the license is validated, e. g., a license issued on November 25, 1955, would expire February 29, 1956.
- (6) Amendments to export licenses. Except for export licenses issued under

toll or conversion agreements, no amendments requesting an extension of the validity period of the license will be granted for export licenses issued under this procedure.

(7) Time for submission of applications. Applications for licenses to export copper scrap (new and old) containing 40 percent or more copper Schedule B No. 641300, copper-base alloy scrap (new and old) containing 40 percent or more copper, Schedule B No. 644000, and copper-base alloy ingots and other crude forms including remelt ingots, Schedule B No. 644100, shall be submitted in accordance with the time schedules set forth in § 373.71.

(e) Aluminum scrap (new and old) and aluminum remelt ingots—(1) General. License applications to export aluminum scrap (new and old), Schedule B No. 630050 and aluminum remelt ingots, Schedule B No. 630070, will be considered by the Bureau of Foreign Commerce for approval in accordance with the procedure described herein.

(2) Availability for export. One of the following certifications shall appear

on each license application:

(a) Where materials are in possession of applicant, the applicant shall execute and submit to the Bureau of Foreign Commerce the following certification:

- I (we) certify that the aluminum materials described in this license application are in my (our) passession and will be available for export not later than December 31, 1955.
- (b) (1) Where materials are not in possession of applicant, the applicant shall submit to the Bureau of Foreign Commerce the following certification from the supplier of the materials:

I (we) certify that not later than December 31, 1955, I (we) shall supply to \_\_\_\_\_

(Name of applicant)

(Quantity in short tons)

short tons of

(Type of aluminum material)

in accordance with the terms of contract sale
number

(Contract number)

dated

(Date of contract)

- (2) All documents evidencing commitment of sale must be kept available for inspection, upon demand, by the Bureau of Foreign Commerce for three years from the date of receipt of the application, as shown on the Acknowledgment Card (Form IT- or FC-116).
- (3) Statement of past participation in exports, Form IT- or FC-821. Applicants are required to submit to the Bureau of Foreign Commerce for the commodities set forth above a Statement of Past Participation in Exports on Form IT- or FC-821 in accordance with the procedure set forth in § 373.4. A separate report on Form IT- or FC-821 shall be filed for each Schedule B number, broken down by countries of destination, and shall cover the quantity in Schedule B units of exports from the United States made during the second, third and fourth calendar quarters of 1954 and the first calendar quarter of 1955, where the total for such exports to all countries

## RULES AND REGULATIONS

for each Schedule B number was \$2,000 or over for the four quarters. In preparing Form IT- or FC-821, the heading above items (c) and (d) shall be changed to read "2d, 3d, 4th quarters, 1954", and the heading above items (e) and (f) shall read "1st quarter 1955."

(4) Unsalable leaded aluminum foil. Applications for licenses to export leaded aluminum foil scrap for which there is no market in the United States are not subject to subparagraphs (2) and (3) of this paragraph, but shall be supported by evidence of commercial unsalability in the domestic market. This evidence may be in the form of a letter or other statement from the applicant, supplier, or persons to whom the scrap was offered for sale. The evidence must be adequate to demonstrate that the scrap has been offered for sale without success in the normal domestic market at reasonable and competitive prices. It shall include, as a minimum, the names and addresses of the potential users to whom the scrap has been offered, the terms at which it has been offered, and the reason(s) for rejection of offers to sell.

(5) Aluminum scrap containing 70 percent or less aluminum (including drosses, skimmings, slags, ashes, insulated wire and cable, paper-backed and cloth-backed aluminum foil) Applications for licenses to export aluminum scrap containing 70 percent or less aluminum shall specify the weight of the aluminum alloy metal content of the

scrap material to be exported.

(6) Validity period. Licenses to export the aluminum materials covered by this paragraph will be issued for a validity period ending on the last day of the third month following the month during which the license is validated, e. g., a license issued on October 25, 1955, would expire January 31, 1956. However, no licenses will be approved for a validity period extending beyond January 31, 1956.

(7) Amendments to export licenses. No amendments requesting an extension of the validity period of the license will be granted for export licenses issued under this procedure. Where an amendment request involves an action other than an extension of the validity period, it shall be submitted directly to the Bureau of Foreign Commerce.

(8) Time for submission of applications. Applications for licenses to export aluminum scrap (new and old) Schedule B No. 630050, and aluminum remelt ingots, Schedule B No. 630070, shall be submitted in accordance with the time schedules set forth in § 373.71.

(9) Utilization of export quota. (i) A licensee who determines that the full amount of the quantity of the aluminum materials shown on the export license will not be used during the validity period for which it was issued should promptly submit a request for amendment on Form IT- or FC-763 to reduce the quantity of the aluminum materials licensed to the amount actually intended for export. The amendment procedure set forth in § 380.2 (g) of this subchapter shall be followed in requesting quantity reductions on outstanding licenses.

(ii) Any quantities recovered as a result of this procedure will be considered for licensing in the same quarter in which they were recovered. The return of any unused quantities, by an exporter will in no way affect the exporter's entitlement under the historical licensing procedure in future quarters.

(Sec. 3, 63 Stat. 7, as amended; 50 U. S. C. App. 2023. E. O. 9630, 10 F. R. 12245, 3 CFR, 1945 Supp., E. O. 9919, 13 F. R. 59, 3 CFR, 1948 Supp.)

JOHN C. BORTON,
Acting Director
Bureau of Foreign Commerce.

[F. R. Doc. 55-10357; Filed, Dec. 27, 1955; 8:46 a. m.]

# TITLE 7—AGRICULTURE

# Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

PART 989—RAISINS PRODUCED FROM RAISIN VARIETY GRAPES GROWN IN CALIFORNIA

MODIFICATION OF MINIMUM GRADE STAND-ARDS FOR PACKED MUSCAT RAISINS

#### Correction.

In F R. Document 55-10276, appearing in the issue for Thursday, December 22, 1955, at page 9855, in the first line of paragraph 1, the reference to "§ 989.69 (a) (1) (i)" should read "§ 989.59 (a) (1) (i)"

#### [Docket No. AO-268]

Part 1009—Milk in Clarksville, W Va., Marketing Area

ORDER REGULATING HANDLING

#### Correction

In Federal Register Document 55–8101, appearing at page 7433 of the issue for Thursday, October 6, 1955, § 1009.5 (f) should read as follows:

§ 1009.5 Clarksville marketing area.

\* \* \* (f) the City of Westen in Lewis
County \* \* \*

# TITLE 43—PUBLIC LANDS:

# Chapter I—Bureau of Land Management, Department of the Interior

Appendix—Public Land Orders
[Public Land Order 1262]

#### ALASKA

EXCLUDING CERTAIN TRACTS FROM CHUGACH
NATIONAL FOREST AND RESTORING THEM
FOR PURCHASE AS HOMESITES AND AS TRADE
AND MANUFACTURING SITES

By virtue of the authority vested in the President by the act of June 4, 1897 (30 Stat. 34, 36; 16 U. S. C. 473) and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

The following-described tracts of public land in Alaska, occupied as homesites or as trade and manufacturing sites, and identified by surveys of which plats and field notes are on file in the Bureau of

Land Management, are hereby excluded from the Chugach National Forest, Alaska, as hereinafter indicated, and restored, subject to valid existing rights, for purchase as homesites or as trade and manufacturing sites under section 10 of the act of May 14, 1898, as amended by the act of May 26, 1934 (48 Stat. 809; 48 U.S. C. 461)

#### [69011]

An area to be identified as U. S. Survey No. 3392, 5.56 acres; latitude 60°29', N., longitude 149°56' W.

An area to be identified as U. S. Survey No. 3393, 4.8 acres; latitude 60°29' N., longlatude 149°59' W.

An area to be identified as U. S. Survey No. 3405, 1.3 acres; latitude 60°30' N., longitude 149°47' W.

U. S. Survey No. 3306, Tract 10-A, 1.50 acres; latitude 60°30'10" N., longitude 149°48' W. (Homesite No. 159, Slaughter Creek Group).

#### 1691201

U. S. Survey No. 2519, Tract 1, 3.28 acres; latitude 60°25'30" N., longitude 140°22' W. (Homesite No. 134, Fall Creek Group).

WESLEY A. D'EWART,
Assistant Secretary of the Interior

DECEMBER 21, 1955.

[F. R. Doc. 55-10350; Filed, Dec. 27, 1955; 8:45 a. m.]

# TITLE 14—CIVIL AVIATION

## Chapter I—Civil Aeronautics Board

Subchapter A-Civil Air Regulations

PART 50-AIRMAN AGENCY CERTIFICATES

# REVISION OF PART

Because of the number of outstanding amendments to Part 50 there follows a revision of Part 50 incorporating all amendments thereto which were in effect on December 22, 1955.

By the Civil Aeronautics Board.

[SEAL]

M. C. Mulligan, Secretary,

#### CERTIFICATE

Sec. 50.1 Issuance. 50.2 School ratings.

#### REQUIREMENTS

50.10 Ground school requirements.
50.11 Ground school curriculum.
50.12 Flying school requirements.

50.13 Flying school curriculum.

#### GENERAL

50.20 Application. 50.21 Display.

50.22 Duration.

50.23 Renewal.

50.24 Transfer. 50.25 Surrender.

50.26 Quality of instruction.

50.27 Student examinations.

50.28 Records.

50.29 Graduation certificates.

50.30 Inspection.

0.31 Curriculum changes.

50.32 Maintenance of facilities, equipment, and material.

50.33 Advertising.

50.34 Change of location.

AUTHORITY: §§ 50.1 to 50.34 issued under sec. 205, 52 Stat. 984; 49 U. S. C. 425. Interpret or apply secs. 601, 607, 52 Stat. 1007, 1011, as amended; 49 U. S. C. 551, 557.

#### CERTIFICATE

- § 50.1 Issuance. An airman agency certificate will be issued to an applicant who complies with the minimum requirements for one or more school ratings.
- § 50.2 School ratings. (a) Basic ground school.
  - (b) Advanced ground school.
- (c) Primary flying school. (1) Airplanes.
  - (2) Helicopters.
  - (3) Gliders.
- (d) Commercial flying school. (1) Airplanes.
  - (2) Helicopters.
  - (3) Gliders.
  - (e) Instrument flying school.
  - (f) Flight instructor school.

#### REQUIRELIENTS

- § 50.10 Ground school requirements.
  (a) Classrooms adequately heated and lighted, of sufficient size to accommodate the greatest number of students scheduled for attendance at any one time.
- (b) Sufficient classroom equipment to insure adequate instruction in all required subjects.
- (c) At least one regularly available principal instructor possessed of a ground instructor certificate with ratings for each of the required subjects of the curriculum.
- § 50.11 *Ground school curriculum*. A ground school curriculum approved by the Administrator for at least one of the following:
- (a) Basic ground school. 50 hours of classroom instruction in the subjects of Civil Air Regulations (the regulations in this subchapter) including air traffic control practices and procedures, navigation, meteorology, and general servicing of aircraft.
- (b) Advanced ground school. 150 hours of instruction in the subjects of Civil Air Regulations, including air traffic control practices and procedures, navigation, meteorology, aircraft and engines, including the general servicing and maintenance of aircraft and engines.
- § 50.12 Flying school requirements.
  (a) An airport adequate for the aircraft to be used and safe for the flight instruction to be given.
- (b) Adequate hangar facilities housmg all arcraft used for flight instruction.
- (c) Adequate office, rest room, and ready room facilities.
- (d) A sufficient number of certificated
   aircraft appropriate for the flight instruction to be given.
  - (e) Adequate shop, or readily available facilities suitable to insure proper maintenance of the aircraft to be used.
  - (f) A sufficient number of certificated mechanics readily available to provide for the inspection, maintenance, and repair of all aircraft used for flight instruction, unless other arrangements are approved by the Administrator.
  - (g) A sufficient number of regularly available and appropriately rated flight instructors.
  - § 50.13 Flying school curriculum. A curriculum approved by the Administrator for at least one of the following:
  - (a) Primary flying school. (1) Airplanes—35 hours of flight time, or 30

- hours of flight time and such additional specialized instruction as is acceptable to the Administrator.
- (2) Helicopters—35 hours of flight time.
  - (3) Gliders—8 hours of flight time.
- (b) Commercial flying school. (1) Airplanes—160 hours of flight time.
- (2) Helicopters—160 hours of flight time.
- (3) Gliders—20 hours of flight time.
  (c) Instrument flying school. 30 hours of instrument flying instruction of which at least 20 hours shall be in actual flight; and 30 hours of ground instruction in the subjects of Civil Air Regulations (the regulations in this subchapter) navigation, meteorology, and radio orientation and procedure, as applied to instrument flying.
- (d) Flight instructor school. 25 hours of flying devoted exclusively to the science of flight instruction, and 40 hours of theoretical instruction in subjects covering the fundamentals of giving flight instruction and the analysis and performance of flight technique.

#### GENERAL

- § 50.20 Application. Application for an airman agency certificate and rating shall be made upon the form prescribed and furnished by the Administrator, and shall be accompanied by two copies of any proposed curriculum.
- § 50.21 Display. Display of an airman agency certificate shall be made upon the reasonable request of any person.
- § 50.22 Duration. An airman agency certificate shall expire 24 calendar months after the month of issuance.
- § 50.23 Renewal. Application for renewal of an airman agency certificate shall be made on a form furnished by the Administrator and may be mailed or presented to any inspector within 60 days prior to the month of expiration.
- § 50.24 Transfer An airman agency certificate is not transferable.
- § 50.25 Surrender Upon the suspension, revocation, termination, or cancellation of an airman agency certificate the holder thereof shall surrender such certificate to an authorized representative of the Administrator.
- § 50.26 Quality of instruction. The quality of instruction shall be such that at least 80 percent of the students who apply within 60 days after graduation will be able to qualify for pilot ratings appropriate to the curriculum from which they were graduated.
- § 50.27 Student examinations. Upon the completion of each subject included in an approved curriculum, each student taking the subject shall be given an appropriate examination. The student's written examination, or, in the case of a practical examination, a report thereof, shall be kept by the school for not less than 1 year from the date of the termination of the student's enrollment.
- § 50.28 Records. The school shall keep an accurate individual record of each student, which shall include a chronological log of all instruction, attendance, subjects covered, examination,

- and examination grades. The entire record shall be certified by an authorized official of the school.
- § 50.29 Graduation certificates. A graduation certificate on the form prescribed by the Administrator shall be given each student graduated from a certificated airman agency school.
- § 50.30 Inspection. Upon reasonable request, an applicant for an airman agency certificate, or the holder of such a certificate, shall permit any authorized representative of the Administrator or the Board to inspect its personnel, facilities, equipment, and records.
- § 50.31 Curriculum changes. Changes in an approved curriculum shall not be made without filing immediate notification of such changes with the Administrator. Unless the school is notified to the contrary within 45 days after filing the proposed changes with the Administrator, they will be considered approved.
- § 50.32 Maintenance of facilities, equipment, and material. A certificated airman agency shall maintain personnel, facilities, and equipment at least equal in quality and quantity to those required for the issuance of such a certificate.
- § 50.33 Advertising. No certificated airman agency shall make any statement pertaining to the school which is false, or which is designed to mislead any person contemplating enrollment in the school. Any advertising which indicates that the school is approved by the Administrator shall clearly differentiate between those courses which have been approved by the Administrator and those which have not.
- § 50.34 Change of location. No change in a location of an approved airman agency shall be made without the prior written approval of the Administrator.
- [F. R. Doc. 55-10358; Filed, Dec. 27, 1955; 8:47 a. m.]

# Chapter II—Civil Aeronautics Administration, Department of Commerce

[Amdt. 174]

PART 609—STANDARD INSTRUMENT APPROACH PROCEDURES

PROCEDURE ALTERATIONS

The standard instrument approach procedure alterations appearing hereinafter are adopted to become effective when indicated in order to promote safety. Compliance with the notice, procedures, and effective date provisions of section 4 of the Administrative Procedure Act would be impracticable and contrary to the public interest. and therefore is not required.

Part 609 is amended as follows:

Note: Where the general classification (LFR, VAR, ADF, HS, GCA, or VOR). Iccation, and procedure number (if any) of any procedure in the amendments which follow, are identical with an existing procedure, that procedure is to be substituted for the existing one, as of the effective date — a, to the extent that it differs from the existing procedure; where a procedure is canceled, the existing procedure is revolved; new procedures are to be placed in appropriate alphabetical requence within the rection amended.

# 1 The low frequency range procedures prescribed in § 609 6 are amended to read in part:

LFR STANDARD INSTRUMENT APPROACH PROCEDURE	Bearings, headings, and courses are magnetic. Distances are in statute miles unless otherwise indicated. Elevations and altitudes are in feet, MSL. Callings are in feet above airport elevation. If a LFR instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted at the below named airport, it shall be made over specified routes. Minimum altitude(s) shall correspond with those established for an route operation in the particular area or as set forth below.	
--	--	--

ninimums	Type aircraft ized induling mininums after passing facility within distance specified or if	More than 1 and ling not accomplished 75 m p h	10 11	* 000	777 888	hes 200-16  EAR and 340° bearing to Saint Francis 200-16  S00-17  ENR and 340° bearing to Saint Francis S00-17  NOTE: Procedure authorized only for air- craft equipped to receive Amarillo LFR and Saint Francis MHW, or Amarillo LFR and Amarillo VOR bearings simul tancously	SS 300-1 Northway LFR (063) within 25 miles, 600-1 OAUTON: Radio towers 2,010' mean sea 800-2 layel between range station and alreport	200-1% 600-1% 800-2	3	300-15 500-15 500-15 800-2	Incs 200-3-5 500-13-5 400-12 800-2	33 300-1 Within 5.1 miles, climb to 2 000 on NE course SPI-LiFR within 25 miles 400-1 800-2	nes 200-15 500-15 400-1 800-2
deiling and visibility minimums	Type	75 m. p. h or less	6	engines or le	268 445	More than 2 eng	engines or less 300-1 600-1 800-2	More than 2 engines T-dn 200-15 C-dn 600-15 A-dn 800-2	e g	8658 1112	More than 2 engines fin	engines or less 300-1 400-1 400-1 800-2	More than 2 engines du du
Oelling an		Condition	8	2,7	404 144	다 아마 마마 마마	A de de	FOA AAAA	12	8-ch 8-ch A-dh 4-dh	. 다 아 아 아 아 아 아 아 아 아 아 아 아 아 아 아 아 아 아	Codn Sch 4 A-dn	다이집 참합합4 월 급 급 급 급
	Course and distance,	alrport	2	257-4 8			6 0—960			265-2 0		027—5 1	
	Minimum altitude over facility on	course (ft )	9	Amarillo	#4 200		2 300	· · · · · · · · · · · · · · · · · · ·	1 300			1 300	
	final approach course (outbound);	tances immering are	129	S side of E course:	257° inbound. 4,700° within 10 miles	Beyond 10 miles not authorized	S side of NW course: 276° outbound 096 inbound, 2,700' within 10 miles.	Not authorized beyond 10 miles	N side of E course:	249° inbound. 1800° within 10 miles		Side of SW course: 210° outbound 200° within 10 miles	
	Minimum altitude		4	4, 700	4,700	4, 200			1,800	1 800	•	2 000	
	Course and dis	8	8	222—7 0		267—11 0			123-11 0	063—7 6		210—10 0	
	Initial approach to facility from—		2	Amarillo VOR		Conway Intersection (linal)	Shuttle to 4,200 on S side of NW course: 276° outbound 006 inbound.	V fbin 25 mies	STL VOR	Lake ' H FAO		Springdeld VOR	
7	Olty and State; airport name, elevation; facility: class and identification; procedure No;	effective date	1	AMARILLO, TEX.	SBRAZ-DTV-AMA Procedure No. 2	Effective date: January 14, 1956. Supersedes Amendment 7, dated July 30 1955. Major changes: Added VOR radial to identify Amerilie Intersection	NORTHWAY, ALASKA Northway, 1,716', SBRAZ-VPDT-ORT Procedure No. 1	4 4 T	Ī	SBRAZ-DTXV Procedure No. 1 Amendment No 8. Effective date: January 14	Supersedes No. 7 dated Do comber 16, 1933. Major changes: (1) column 3 line 2 course revised; (2) column 6 revised to within 10 miles; (3) new format on minimums; (4) column 11 revised	<u> </u>	Latective tasts January 14 1936. Supersedes No 5 dated June 10, 1934. Major changes: (1) Column 5 distance revised to 10 miles (criferia); (2) column 7 revised to agree with C &G (3) New format on mini- muns

2 The very high frequency omnirange procedures prescribed in § 609 9 (a) are amended to read in part:

VOR STANDARD INSTRUMENT APPROACH PROCEDURE

Boaring, headings and courses are magnetic. Distances are in statute miles unless otherwise indicated, Bievations and altitudes are in feet, MSL Collings are in feet above airport clevation.

If a VOR instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure authority the Administratorior Olyll Accounties for such airport. Initial approaches shall be made ever specified routes. Minimum altitude(s) shall correspond with these established for en route operation in the particular area or as set forth below.

	If visual contact not established at author ized lauding minimums after passing facility within distance specified or if land		11	Within 6.4 miles, climb to 1,600' on radial 327° within 25 miles	Within 5 miles, elimb to 2,100° on 632° radial within 25 miles.  Ouvrion; Madio fourer, 1,000 mean aca lovel 2 7 miles No of Afripart Norz: No control acon established, VHF communications with Norkind radio not available below 1,460° MSL	Within 0.2 mir , climb to 2537 on cours 137 from the 57L VOR within 50 miles	Within 2.5 miles, climb to 3,657 on radal and barden, barden barden.  After procedure turn maintain 2,657 until radio in hisband. It and other best received request green electrones to etart descent are completion of procedure turn and cress yolk inhaund at a minimum of 1,657 (200-1 required for takeoff on all runways except No 27
minimums	Typo alroraft	More than 76 m p h	10	623 800-12 800-12 800-12 800-12 800-12 800-12	355555 SEES	5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5	822 822 822
Colling and visibility minimums	Typo	76 m. p. h or less	0	7-dn 800-1 800-2	cuclus or 200-1-00-1-00-1-00-1-00-1-00-1-00-1-00-	7-40 C-40 C-40 C-40 C-40 C-40 C-40 C-40 C	Two engines or less do the Eight of the Eigh
ան Զայլյօլ		Oondition	8	7-d-2-d-3-3-3-d-3-3-3-3-d-3	7 - 7 - 7 - 7 - 7 - 7 - 7 - 7 - 7 - 7 -	사라 아라 아라 아라 아라 아라 아라 아라 아라 아라 아라 아라 아라 아라	# # # # # # # # # # # # # # # # # # #
	Course and distance, facility to	airport	7	327—6 4	03-2 0	137-0 2	109-2.6
			9	003	1,500	1,483	(C) (1
December of the contract of the contract of	freedure turn (—) side of final approach course forthound and inbound);	tances	ō	E side of course: 147° outbound 327° inbound. 1,400° within 10 miles	8 side of cource: 212° outbound 022° inbound. 2 060° within 10 milcs	W. cho of cource 317 cuttomy 137 inband. 1,ce within 10 miles	Wrldo of course; S25° outbound 9,C69° within 10 miles.•
	Minimum altitudo	(m)	4	1, 500	2,000	1, 600	3, 653
	Course	oping of		216—8 0	351—16.0	ಯ–11 0	233—21 0 310—11 0 119—6.0
	Initial approach to facility		2	Columbia LFR	Rockford LFR	St Louis LFR	Janul Radiobezean Coronado FM/RBN La Jolla FM (anal)
	Olty and State; airport name, elevation; facility: class and identification; procedure No ;	offective date	1	COLUMBIA, 8, 0 Golumbia 24, 0 BYOR-GAE Procedure No 1 Amendment 1. Effective date: January 14, 1926 Original, dated June 22, 1923, 1610, 1	JANESVILLE, WIS BOCK COURTY EOF BYOCK WELVE, Procedure No. 1 Amendment No Original Effective date: January 14, 10:5, Euperceles none, Mojer chargest None	Et. LOUIS, MO LOME-TFICH, 223 NVOR-STL. PRESENTED NO. 1 APPENDENCE OF APPENDING 4 LIGHT CARE JOHN TO. 1 LIGHT CARE JOHN TO. 1 LIGHT CARE JOHN TO. 2 LIGHT CARE JOHN TO. 2 LIGHT CARE JOHN TO. 2 LIGHT CARE JOY CONTROL OF CARE JOY CONTROL OF CARE JOY CONTROL OF CARE JOY CONTROL OF CONTROL	SAN DIEGO, CALIF Indicept lefel, 16 INOUGH-DTW-SAN DESCRIPTO, OF THE OFFICE OFFICE OFFICE OFFICE OFFICE OFFI

# The instrument landing system procedures prescribed in § 609 11 are amended to read in part;

က

ILS STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings headings, and courses are magnetic Distances are in statute miles unless otherwise indicated. Elevations and altitudes are in feet, MSL. Gellings are in feet above airport elevation.
If an ILS instrument approach is conducted at the below named alroot, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure authorized by the Administrator for Civil Accounties for such airport. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below.

Within 4.7 miles of LOM climb to 2,300 on course of 118° within 25 miles of LOM.

No approach lights.
Am Oannen Norz: #400-1 required when glide path inopera 4.11 installed components of the LS must be operating, other wissalternate minimums of 800-2 apply Olimb to 1,000 on BE course.

LIS or 46 miles after passing
LOM (ADF) climb to 1,000 on

No approach lights.

No approach lights.

4,00-3, required when glide slope
and utilized components of LLS

All installed components of LLS

must be operating otherwise
alternate minimums of 800-2

apply f visual contact not established upon descent to authorized land ing minimums or if landing not accomplished 13 Ħ Ines 200-15 500-135 More than 75 m p h 300-3% 300-34 300-3 Celling and visibility minimums 800-12 800-12 300-7 400-1 800-2 #600-2 5 8 8 800-2 77 888 <del>1</del>05 400-1 . 2005 <u>\$</u> Type aircraft ដ % 80 % 76 m.p h or less engines or 1 300-1 500-1 300-1% than 2 eng than 2 ong 2 engines or le T-dn 300-1 C-dn 400-1 <del>1</del>00 800<u>-</u>2 800-2 400-1 #C00-2 2-008 All afrera # More t ADF Men Sand S-dn 9 A-dn •ILS ADF S-du 9 #ILS ADF A-dn TLS ADF S-dn 14 ILS ADF S-dn 14 ILS ADF Condition A-da ES ADF 유 Altitude of glide slope on distance to approach and of runway at 080-07 Middle marker 425 6 1,988-4 7 1 420-4 6 Outer marker ILS 2 000 Minimum alti tude at glide slope intercep tion inbound (ft) ADF 1 500 ADF 900 over LOM ILS 1 400 Procedure turn
(-) side of final
approach course
(outbound and
inbound; alt
tudes); limiting
distances Side of W course:
271° outbound
091° inbound
2 000' within 10
miles course: 320° outbound 140° within 10 miles W side of NW ဗ 1,300 Mini mum al titudes (ft ) 1,600 1 68 10 244-270 303-170 067-45 4 Transition to ILS LOM LOM LOM Intersection 219° bearing from Bay Minette HW and SE course ILS Bay Minette HW From C/I Mobile VOR Brookley HW PLINT, MICH.
Bishop Field, 781'
ILS-IFNT
IOM-FIN
IOM-FIN
Theredure No. 1
Amendment No. 3
Combination ILS/ADF.
Effective date: January
14, 1066.
July 15, 1064
July 15, 1064
July 15, 1064
Major charges; (I) Transitions deleted, columns 2, 3, 4, 5 and 10 mins 2, 4, 5 and 10 mins oritaria; (3)
GP altitude deleted byond 10 mins oritaria; (3)
GP altitude columns 6
procedure turn, altitude deleted byond 10 mins oritaria; (3)
GP altitude columns 6
procedure turn, altitude deleted byond 10 mins oritaria; (3)
GP altitude columns 6
and mins oritaria; (3)
GR altitude columns 6
and mins oritaria; (3)
GR altitude columns 6
and mins oritaria; (3)
GR altitude columns 6
and mins oritaria; (3)
And mins oritaria; (3)
GR altitude columns 6
and mins 10 mins 1 City and State; airport name, elevation; facility: class and identification; procedure No; effective date Supersedes Amendment
A dated June 25, 1054.
Major changes: Revise
transitions. Increase
missed approach ait
titude. Add alter
nate minima note and MOBILE, ALA Bates, 217. ILS-IMOB LOM-MO. Combination ILS an ADF. Procedure No. 1 Amendment No. 5 Effective date: Jan 1.

551) O Ø Þ 3 These procedures shall become effective on the dates indicated in Column 1 of the procedures as amended; 52 Stat 1007 60 (Sec 205 52 Stat 984 as amended; 49 U S C 425 Interpret or apply sec

[SEAL]

B Doc 55-9372; Filed, Dec. 27 1955; 8:45 a. m.]

色

F B Lee Administrator of Civil Aeronautics.

# TITLE 19—CUSTOMS DUTIES

# Chapter I-Bureau of Customs, Department of the Treasury

T.D. 539851

PART 8-LIABILITY FOR DUTIES; ENTRY OF IMPORTED MERCHANDISE

A study of the Customs Regulations relating to powers of attorneys indicates that certain requirements of the regulations have in many instances made the use of powers of attorney impracticable. As a result, a large number of customs transactions are made in the name of a nominal consignee, rather than in the name of the actual consignee. In order to relieve restrictions on the use of powers of attorney to the extent that the revenue will not thereby be endangered, § 8.19 of the Customs Regulations is amended as follows:

- 1. Paragraph (a) is amended to read as follows:
- (a) A power of attorney may be executed for the transaction of a specified part or for all the customs business of the 'principal, except that a separate power of attorney on customs Form 5295 or 5295-A shall be required for filing protests.<sup>20</sup> Customs Form 5291 may be used by individuals and customs Form 5293 by corporations for giving powers of attorney to transact customs business. If-a customs power of attorney is not on a prescribed customs form, it shall be either a general power of attorney with unlimited authority 223 or a limited power of attorney as explicit in its terms as is the prescribed customs form and executed in the same manner as the prescribed form. If for the execution of sealed instruments, it shall be under seal. A customs power of attorney to a minor shall not be accepted. customs power of attorney executed under authority of another power of attorney shall be accepted if the grantor of the original power of attorney is a nonresident and if such original power contains express authority from the principal for the appointment of a subagent or subagents. Customs powers of attorney of residents shall be without power of substitution except for the purpose of executing shippers' export declarations. A subagent so appointed cannot delegate his authority. A customs power of attorney executed in favor of a-licensed corporate customhouse broker may specify that the power of attorney is granted to the corporation to act through any of its licensed officers or any employees specifically authorized to act for such corporation by power of attorney filed by the corporation with the collector of customs.
- There is appended to paragraph (a) the following new footnote:

202 The following is an example of an acceptable general power of attorney with unlimited authority:

Know all men by these presents, that

(Name of principal)

(State legal designation, such as corporation, individual, etc.)

residing at \_\_\_\_\_and doing business under the laws of the State of .hereby appoints \_\_\_

(Name, legal designation, and address) as a true and lawful agent and attorney of the principal named above with full power and authority to do and perform every lav-ful act and thing the cald agent and attor-ney may deem regulate and necessary to be done for and on behalf of the said principal without limitation of any kind as fully as said principal could do if present and acting, and hereby ratify and confirm all that caid agent and attorney shall lawfully do or cause to be done by virtue of these presents until

and including \_\_\_ ., or until notice (Date) of revocation in writing is duly given before

that date.

(Principal's name)

- 3. Paragraph (e) is amended to read
- (e) A power of attorney shall not be ' required when the person signing customs documents on behalf of a resident corporation is known to the collector to be the president, vice president, treasurer, or secretary of the corporation. When a power of attorney is required for a resident corporation, it shall be ex-ecuted by an officer of the corporation, and a certificate of the secretary, assistant secretary, or other corporate officer, but not the officer executing the power, showing the authority of such officer to execute the power of attorney shall be executed under seal as follows:

#### CERTIFICATE

---, certify that I am the .\_\_\_ of \_\_\_\_ ....., organized under the laws of the State of \_\_ that \_\_\_\_\_, who signed this power of attorney on behalf of the donor, is the \_\_\_ of the said corporation; and that said power of attorney was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body as the same appears in a recolu-tion of the Board of Directors passed at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, now in my possession or custody.

I further certify that the resolution is in accordance with the articles of incorporation \_\_ day of and by-laws of said corporation.

In witness whereof, I have hereunto cet my hand and affixed the seal of said corporation, at the City of \_\_\_\_\_\_ this \_\_\_\_\_ at the City of \_\_\_\_\_

A power of attorney executed by a nonrealdent corporation shall be supported by the following documents which, except the certificate of incorporation, shall be certified as correct by the secretary of the corporation under its corporate ceal: (1) a certificate from the proper public officer of the country showing the legal existence of the corpora-tion, (2) a copy of that portion of the charter or articles of incorporation which shows the scope of the business of the corporation and the governing body thereof, (3) if the authority of the grantor is derived from the charter or articles of incorporation, there shall be filed also a copy of that portion thereof which contains such authority or, if the authority of the granter is derived from the governing body, there chall be filed a copy of the by-laws or other document which authorizes the governing body to designate others to appoint agents or attorneys, together with a copy of the recolution, minutes, or other document by which the governing body conferred the authority on the grantor.

- A new paragraph (j) is added reading as follows:
- (j) An individual (but not a partnership, association, or corporation) who is not a regular importer may appoint a relative as his agent for customs purposes by executing a power of attorney applicable to a single non-commercial shipment by writing, printing, or stamping and subscribing on the invoice, or a separate paper attached thereto, the following statement:

Address is hereby authorized to execute, as an agent who has knowledge of the facts, pursuant to the provisions of section 485 (f), Tariff Act of 1930, as amended, the consignee's and owner's declarations provided for in section 485 (a) and (d), Tariff Act of 1930, and to enter on my behalf or for my account the goods described in the attached invoice which contains a true and complete statement of the facts concerning this shipment.

\_, 19\_ Signature of importer \_\_\_ Address \_

- 5. A new paragraph (k) is added reading as follows:
- (k) For the purposes of this section "resident" shall mean an individual who resides within, or a partnership, one or more of whose partners reside within, the customs territory of the United States or the Virgin Islands, or a corporation incorporated in any State, Territory, or possession within the customs territory of the United States or in the Virgin

(R. S. 161, 251, sec. 624, 46 Stat. 759; 5 U. S. C. 23, 19 U. S. C. 63, 1624)

Notice of the proposed amendment of § 8.19 was published in the FEDERAL REG-ISTER on August 10, 1955 (20 F. R. 5779). After consideration of the data, views, and arguments received relating to the proposed amendment, the amendments set forth above are adopted and shall become effective 60 days after publication in the Federal Register.

RALPH KELLY, Commissioner of Customs.

Approved: December 20, 1955.

DAVID W. KERIDALL, Acting Secretary of the Treasury.

[F. R. Doc. 55-10355; Filed, Dec. 27, 1955; 8:46 a. m.]

## [T.D. 53934]

PART 10-ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

ARTICLES FOR PERSONAL OR HOUSEHOLD USE, ENTRY

As the result of suggestions received under the Incentive Awards Program, the Bureau has decided that articles accompanying and for the personal or household use of persons arriving in the United States and entitled to free entry under section 321 (a) (2) (B) of the Tariff Act of 1930, as amended, may be cleared under an oral declaration and that declarations of owners with supporting inventories described in § 10.26

(b) and (c) of the Customs Regulations covering the personal and household effects of members of the armed forces of the United States or of civilian employees of the Panama Canal which are examined by customs officers outside the United States and passed free upon arrival in this country may be accepted as entries for the effects.

Accordingly, the Customs Regulations are amended as follows:

Section 10.19 (b) is amended by inserting "or are being admitted free of duty under section 321 (a) (2) (B)" after "1798 (b)"

(Sec. 498, 46 Stat. 728, as amended; 19 U.S. C. 1498)

Section 10.26 (b) is amended by deleting "and upon an entry being filed to cover the importation" in the first sentence and by adding the following sentence at the end of the paragraph: "The declaration of the owner may be accepted as an entry for any effects passed free under this paragraph when supported by evidence of the right to make entry."

(R. S. 161, 251, sec. 624, 46 Stat. 759; 5 U. S. C. 19, 19 U. S. C. 66, 1624)

[SEAL]

RALPH KELLY, Commissioner of Customs.

Approved: December 20, 1955.

DAVID W. KENDALL,

Acting Secretary of the Treasury.

[F. R. Doc. 55-10354; Filed, Dec. 27, 1955; 8:46 a.m.]

# TITLE 32—NATIONAL DEFENSE Chapter VI—Department of the Navy

MISCELLANEOUS AMENDMENTS TO CHAPTER

1. Part 720 is amended to read as follows:

PART 720—PROCEEDINGS IN CIVIL COURTS

- 720.1 Delivery when personnel beyond territorial limits of the requesting State.
- 720.2 Delivery when personnel within territorial limits of the requesting State.
- 720.3 Agreement required prior to delivery to State authorities.
- 720.4 Delivery of personnel to Federal authorities.
- 720.5 Personnel released by civil authorities on bail or on their own recognizance.
   720.6 Service of process upon personnel of the Naval Establishment.
- 720.7 Personnel of the Naval Establishment subpoenaed as witnesses in State or Local courts.
- 720.8 Personnel of the Naval Establishment subpoenaed as witnesses in Federal
- 720.9 Naval prisoners as witnesses or parties in civil courts.

AUTHORITY: §§ 720.1 to 720.9 issued under R. S. 161, sec. 1 64 Stat. 112; 5 U. S. C. 22, 50 U. S. C. 568.

Note: §§ 720.1 to 720.9 are contained in Chapter VII of 1955 Naval Supplement to the Manual for Courts-Martial, United States, 1951.

§ 720.1 Delivery when personnel beyond territorial limits of the requesting State. In all cases in which the delivery of any person in the Navy or Marine Corps is wanted by State or Local Civil authorities for trial, and such person is not attached to or serving at a Naval or Marine activity within the requesting State, or aboard a ship within the territorial waters of said requesting State, .a requisition for the delivery of the person must be made by the Governor or Chief Executive of such State, addressed to the Secretary of the Navy, showing that the person desired is charged with a crime in that State for which he could be extradited under the constitution of the United States, the enactments of Congress, or the Laws of the State desiring his delivery. Such requisition should be forwarded to the Secretary of the Navy (Judge Advocate General) for examination, together with the appointment of the agent of the State to whom the delivery is to be made. If the papers allege that the person is a fugitive from the justice of that State and that he is charged with an extraditable crime, as aforesaid, and the papers are otherwise found to be in due form, the Secretary of the Navy will send the necessary authorization to the designated agent permitting him to take the person into custody upon compliance with § 720.3.

§ 720.2 Delivery when personnel within territorial limits of the requesting State—(a) General. In cases in which the delivery of any person in the Navy or Marine Corps is requested by Civil authorities within the Continental United States, Alaska, Hawaii, the Canal Zone or Puerto Rico, and such person is attached to or serving at a Naval or Marine Station or other Naval or Marine place within the requesting State, Territory or possession, or aboard a ship within the territorial waters of such State, Territory or possession, commanding officers are authorized to deliver such person when a proper warrant is presented. Warrants reciting that the individual is a fugitive from another State or jurisdiction (commonly known as fugitive warrants) are considered an attempt to come within the provisions of \$720.1 and are not "proper warrants" within the meaning of this section; delivery will be refused upon presentation thereof.

(b) Disciplinary proceedings pending. When disciplinary proceedings involving military offenses are pending or the person is undergoing a sentence of a court-martial, commanding officers must obtain specific authority from the Secretary of the Navy (Judge Advocate General) to deliver personnel to State, Territorial or Local Authorities.

§ 720.3 Agreement required prior to delivery to State authorities—(a) General. In every case in which the delivery of any person in the Navy or Marine Corps to the civil authorities of a State, for trial, is authorized, such person's commanding officer will, before making such delivery, obtain from the Governor or other duly authorized officer of such State a written agreement that the commanding officer of the naval or marine activity to which the person is to be returned will be immediately informed of the outcome of the trial and that the

person delivered will be returned to the naval or marine activity designated in the agreement without expense to the United States or to the person delivered immediately upon completion of his trial for the alleged misconduct which occasioned his delivery to the civil authorities, in the event the charges against him are dismissed, or in the event he is acquitted, or immediately upon his satisfying the sentence of the court in the event he is convicted and a sentence imposed, or upon other disposition of his case, provided the naval or marine authorities shall then desire his return. When indicating in the agreement the naval or marine activity to which the person delivered is to be returned by the State, care should be taken to designate the closest appropriate activity which possesses special court-martial jurisdic-The Department considers this agreement substantially complied with when the man is furnished transportation back to a naval or marine activity as set forth herein and necessary cash to cover his incidental expenses en route thereto, and the Navy Department so informed. Any substantial departure from these requirements must have prior approval from the Secretary of the Navy (Judge Advocate General)

(b) Form of agreement. The following is suggested as a form of agreement acceptable to the Department in cases referred to in paragraph (a) of this section.

In consideration of the delivery of

(Name of person delivered)
United States Navy (United States Marine

Corps), to \_\_\_\_\_, at \_\_\_\_, at \_\_\_\_, at the authority vested in me as \_\_\_\_\_, that the Commanding Officer of the \_\_\_\_\_,

(Insert here the name of the command to which the man is to be returned)

will be immediately informed of the outcome of the trial and that said \_\_\_\_\_\_ (Name of person delivered)

will be returned to the

(Insert here the name of the command to

which the man is to be returned) or issued transportation thereto, without expense to the United States or to the person delivered immediately upon dismissal of the charges or completion of the trial in the event he is acquitted, or immediately upon satisfying the sentence of the court in the event he is convicted and a sentence imposed, or upon other disposition of his case, provided that the naval authorities shall then desire his return.

§ 720.4 Delivery of personnel to Federal authorities—(a) Authority to deliver Commanding officers are authorized to deliver personnel to Federal authorities on presentation of a proper warrant in all cases except those in which disciplinary proceedings are pending or the person is undergoing a sentence of a court-martial or when in the opinion of the commanding officer unusual circumstances exist which warrant reference of the matter to the Secretary of the Navy (Judge Advocate General)

(b) Agreement not required of Federal authorities. An agreement as to expenses will not be exacted as a condition to the delivery of personnel to Federal authorities for trial. Men desired by Federal authorities for trial will be called

for and taken into custody by a United States marshal or deputy marshal. In the event that the person delivered is acquitted upon said trial, or immediately upon satisfying the sentence of the court in the event he is convicted and a sentence imposed, or upon other disposition of his case, provided that the naval authorities shall then desire his return, the man will be returned to the naval service and the necessary expenses paid from an appropriation under the control of the Department of Justice.

§ 720.5 Personnel released by civil authorities on bail or on their own recognizance. A person in the Navy or Marine Corps arrested by Federal or State civil authorities and released on bail or his own recognizance has a duty to return to his parent organization. Accordingly, where a person in the Navy or Marine Corps is arrested by Federal or State authorities and returns to his ship or station on bail, or upon his own recognizance, the commanding officer shall normally grant him leave of absence to appear for trial on the date set, upon verification of the attending facts, date of trial, and approximate length of time that should be covered by the leave of absence: Provided, Such absence will not prejudice the best interests of the naval service. Nothing in this section is to be construed as permitting the person arrested and so released to avoid the obligations of his bond or his recognizance solely by reason of his being in the service.

§ 720.6 Service of process upon personnel of the Naval Establishment—(a) Within the jurisdiction: Commanding officers afloat and ashore are authorized to permit service of process of Federal, State, Territorial, or Local courts upon naval personnel or civilians named therein and located within the jurisdiction of the court out of which the process issues, but such service should not be allowed without the permission of the commanding officer first being obtained. (Personnel serving aboard vessels located within the territorial waters of the State out of which the process issues are considered within the jurisdiction of the court for the purpose of service of process.) In cases where the exigencies of the service would jeopardize or limit personnel from defending themselves in litigation, service of process will not be permitted until conditions permit. The commanding officer shall permit the service of process except in unusual cases where compliance with the mandate of the process would seriously prejudice the public interest. Where practicable, commanding officers will require that the process be served in their presence, or that of an officer designated by them. Where service of process by mail is sufficient, the process may be mailed to the person named therein. In all cases com-manding officers will insure that the nature of the process is explained to the person concerned.

(b) Where service is not allowed. Where service of process is not permitted, a report of such refusal to permit service and the reasons therefor shall be forwarded by letter to the Secretary of the Navy (Judge Advocate General)

(c) Personnel beyond the jurisdiction of the court. Where a person in the naval service, or a civilian, is beyond the jurisdiction of the court issuing the process, the commanding officer will permit service or delivery of the process under the same conditions as noted in paragraph (a) of this section above for whatever legal effect it may have. At the same time the commanding officer or his designee will advise the person being served that he is not required to indicate acceptance of service in writing, or otherwise, although he may do so voluntarily, and further advise him to consult legal counsel. Where process is forwarded to a commanding officer with the request that it be delivered to a person within his command, he may deliver it to the person named therein, provided he voluntarily accepts it. In such cases the commanding officer will insure that the serviceman or civilian concerned is informed that he is not required to accept service of the process but may do so voluntarily. The commanding officer is not required to act as a process server, and when the person named in the process does not voluntarily accept the process it should be returned to the forwarder with the advice that the person named therein refuses to accept it.

(d) Leave of absence to be granted persons served with process. In those cases where the personnel under his command are served with process as noted in paragraph (a) of this section above or accept service of process as noted in paragraph (c) of this section above, the commanding officer is authorized and will normally grant leave of absence to the person upon whom the process is served in order to permit him to obey the same, unless the public interest would be seriously prejudiced by his absence. In such cases, a full report of the matter should be made to the Secretary of the Navy (Judge Advocate General) prior to the date set for appearance of the person served, where possible.

(e) Suits against the United States. Where it appears that a subpoena or other process relates to a suit against the United States dispatch advice will be requested of the Judge Advocate General. Where it appears that the subpoena or other process related to a suit against the United States is brought under the provisions of the Public Vessels Act, dispatch advice will be requested of the Judge Advocate General (Admiralty Division) in view of the requirements of 46 U.S. C. 784.

§ 720.7 Personnel of the Naval Establishment subpoenaed as witnesses in State or Local courts. Where personnel of the naval establishment, service personnel or civilian employees, are subpoenaed to appear as a witness in State or Local courts, and are served in the manner described under either of the conditions set forth in § 720.6 the provisions of § 720.6 (d) apply.

§ 720.8 Personnel of the Naval Establishment subpoenaed as witnesses in Federal courts—(a) Witnesses on behalf of Federal government. Where naval personnel are required to appear as wit-

nesses in a Federal court to testify on behalf of the Federal government, the Bureau of Naval Personnel or the Commandant of the Marine Corps, as the case may be, will direct the activity to which the person is attached to issue Temporary Additional Duty Travel Orders to the person concerned. The charges for such orders will be borne by the activity, to which the required witness is attached. Payment to witnesses will be as provided by the Joint Travel Regulations and U. S. Navy Travel Instructions. If the required witness is to appear in a case where the Department of the Navy is not a party in interest, the Navy will be reimbursed in accordance with the procedures outlined in the Navy Comptroller Manual, paragraph 046278.

(b) Witnesses on behalf of nongovernmental parties—(1) Criminal actions. Where naval personnel are served with a subpoena to appear as a witness for the defendant in a criminal action and the fees and mileage required by Rule 17 (d) of the Federal Rules of Criminal Procedure are tendered, the commanding officer is authorized to issue the person subpoenzed premissive orders authorizing attendance at the trial at no expense to the government, unless the public interest would be seriously prejudiced by his absence, in which case a full report of the circumstances will be made to the Judge Advocate General. In those cases where fees and mileage are not tendered as required by Rule 17 (d) of the Federal Rules of Criminal Procedure, but the person subpoenaed still desires to attend, the commanding officer is authorized to issue permissive orders at no cost to the government, as above, however, such persons should be advised that an agreement as to reimburgement for any expenses incident to travel, lodging, and subsistence should be effected with the party desiring their attendance and that no reimbursement should be expected from the government.

(2) Civil actions. Where naval personnel are served with a subpoena to appear as a witness on the behalf of a nongovernmental party in a civil action brought in a Federal court, the provisions of § 720.6 apply.

§ 720.9 Naral prisoners as witnesses or parties in civil courts. (a) Crimmal actions. In those instances where the Federal or State authorities desire the attendance of a naval prisoner as a witness in a criminal case, a request for such person's attendance should be submitted to the Secretary of the Navy (Judge Advocate General). Upon receipt of such a request, authority will be given, in a proper case, for the production of the requested naval prisoner in court without resort being had to a writ

(b) Civil actions. The Navy Department will not authorize the attendance of a naval prisoner in a Federal or State court, either as a party or as a witness, in private litigation pending before such court, as in such cases the court may grant a postponement or a continuance of the trial; but the Navy Department will allow the deposition of such naval prisoner to be taken in the case.

of habeas corpus ad testificandum.

2. Part 725 is amended to read as follows:

PART 725-DISPOSITION OF CASES INVOLV-ING PHYSICAL DISABILITY

Sec 725.1

Source of authority.

PHYSICAL EVALUATION BOARDS

725.2 Function.

°725.3 Convening authorities.

725.4 Appointment of boards. 725.5

Jurisdiction of boards.

Cases involving members of the naval SERVICE ON EXTENDED ACTIVE DUTY

725.6 Composition.

725.7 Orders for appearance.

725.8 General instructions.

CASES INVOLVING MEMBERS OF THE NAVAL SERVICE NOT ON ACTIVE DUTY

725.9 Composition.

725.10 Orders for appearance.

725.11 General instructions.

THE PHYSICAL REVIEW COUNCIL

725.12 Convening authority.

725.13 Composition. 725.14 Jurisdiction.

725.15 Function.

725.16 General instructions.

# THE PHYSICAL DISABILITY APPEAL BOARD

725.17 Convening authority.

725.18 Composition.

725.19 Jurisdiction.

Function. 725.21 General instructions.

#### PERIODIC PHYSICAL EXAMINATIONS

725.22 Requirements.

725.23 Procedure.

#### FINAL ACTION

Action by the Secretary of the Navy. 725.24

725.25 Relief from final action.

## APPENDIX

725.26 Excerpts from "Misconduct and Line of Duty" provisions of Chapter IV of the 1955 Naval Supplement to the Manual for Courts-Martial, United States, 1951, referred to in

AUTHORITY: §§ 725.1 to 725.26 issued under sec. 413, 63 Stat. 824; 37 U.S. C. 283. Interpret or apply R, S. 161, sec. 206, 52 Stat. 1179, as amended, sec. 302, 58 Stat. 287, as amended, secs. 401-412, 414, 63 Stat. 816-824, as amended, 825, as amended, secs. 226, 249, 66 Stat. 488, 495; 5 U. S. C. 22, 34 U. S. C. 854e, 37 U. S. C. 271-282, 284, 285, 38 U. S. C. 6931, 50 U.S.C. 950, 992.

Note: §§ 725.1 to 725.25 are contained in Chapter IX of 1955 Naval Supplement to the Manual for Courts-Martial, United States. 1951.

§ 725.1 Source of authority. Title IV of the Career Compensation Act of 1949 (37 U.S. C. 271-285) provides that, subject to certain other requirements, when it is determined that a member of the uniformed services is unfit to perform the duties of his office, rank, grade or rating by reason of physical disability, he may be retired or separated from the service concerned. Section 413 of the Act (37 U.S. C. 283) provides that the Secretary of the Navy shall prescribe regulations for the administration of the Title. Section 302 of the Servicemen's Readjustment Act of 1944, as amended (38 U.S. C. 693i) directs the Secretary of the Navy to establish a board to review, at the request of any officer retired

or released from active service, without pay, for physical disability pursuant to the decision of a retiring board or board of medical survey, the findings and decision of such board. Section 226 of the Armed Forces Reserve Act of 1952 (50 U. S. C. 950) provides that the Secretary of the Navy may provide for the honorable discharge or transfer to a retired status of members of reserve components who are found not physically qualified, subject to certain considerations, for active duty. Section 249 of that act (50 U.S. C. 992) provides that an officer of the reserve components who has completed three years of commissioned service shall not be involuntarily discharged or separated except pursuant to the approved recommendation of a board of officers convened by competent authority or the approved sentence of a court-martial. Section 206 of the Naval Reserve Act of 1938, as amended (34 U.S.C. 854e) provides that enlisted men transferred to the Fleet Reserve after sixteen or more years of service who are found not physically qualified upon a physical examination, required by the statute, shall be transferred to the retired list of the Regular Navy. The following regulations are prescribed pursuant to and in implementation of the foregoing provisions of law. They are designed to afford an individual whose physical fitness is being evaluated a full and fair hearing, when required, and to provide the Secretary of the Navy, in whom reposes the responsibility for final determination of each case, a sound basis for such determination. To accomplish these ends, various agencies shall function as prescribed in this part.

Note: No reference is made herein to medical boards or medical dispositions prior to or independent of evaluations made pursuant to this chapter inasmuch as this subject is covered by the Manual of the Medical Department, U. S. Navy.

# PHYSICAL EVALUATION BOARDS

§ 725.2 Function. Physical evaluation boards are constituted to afford full and fair hearings incident to evaluation of the physical fitness of certain members and former members of the naval service to perform the duties of their rank, grade or rating; to investigate the nature, cause, degree and probable permanency of disabilities presented by such parties; and to make recommended findings appropriate thereto. No member of the naval service shall be separated or retired by reason of physical disability from an active duty status without a hearing before a physical evaluation board unless such hearing is waived by the member concerned. No member of the naval service shall be separated or retired by reason of physical disability from an mactive duty status without a hearing before a physical evaluation board if such member shall demand it. As used in this part, a "member of the naval service" shall include any commissioned officer, chief warrant officer, warrant officer, naval aviation cadet, or enlisted person, including a retired person, of the Navy and Marine Corps, the Reserve components thereof, the Fleet Reserve and Fleet Marine Corps Reserve.

§ 725.3 Convening authorities. (a) The Secretary of the Navy and such officers as he may designate may convene physical evaluation boards. The following officers are hereby designated as empowered to convene such boards:

Chief of Naval Personnel.

Commandant of the Marine Corps.

Commandants of the First, Third, Fourth, Fifth. Fifth, Sixth, Eighth, Ninth, Eleventh, Twelfth and Thirteenth Naval Districts.

Commandant, Potomac River Naval Com-

Commandant, Marine Corps Schools. Quantico, Virginia.

Commanding Generals of Marine Base, Camp Lejeune, North Carolina, and Camp Pendieton, Oceanside, California.

Commanding General, Marine Corps Recruit Depot, Parris Island, South Carolina. Commanding General, Department of the Pacific.

Such other officers as the Secretary of the Navy may from time to time designate.

(b) No such officer may appear as the individual whose case is to be evaluated before a physical evaluation board which has been convened by him or his successor or by anyone under him in the chain of command.

§ 725.4 Appointment of boards. ders appointing physical evaluation boards shall designate the time and place of meeting and shall list by name the membership and counsel of the board, provided that the medical members of the board shall be selected from medical officers specified for such duty, either permanent or alternate, by the Surgeon General of the Navy. More than the required number of members may be listed in the orders, provided that the orders contain provisions insuring that only the correct number of officers shall act in any one case. Unless the board is appointed by the Secretary of the Navy, or an officer designated in § 725.3, the appointing orders must show that authority to appoint has been duly granted. Certified copies of such orders and amendatory orders shall be forwarded to the Judge Advocate General by the convening authority. The original orders appointing physical evaluation boards and the originals of all amendatory orders shall be retained by the boards until cancelled, when they shall be forwarded to the Judge Advocate General via the convening authority.

§ 725.5 Jurisdiction of boards. A physical evaluation board shall have jurisdiction to act in any proper case referred to it by the Secretary of the Navy, the Chief of Naval Personnel, the Commandant of the Marine Corps, the Surgeon General of the Navy, the Physical Disability Appeal Board, the Physical Review Council, or any officer authorized to convene a medical board.

CASES INVOLVING MEMBERS OF THE NAVAL SERVICE ON EXTENDED ACTIVE DUTY

§ 725.6 Composition—(a) In general. A physical evaluation board will be composed of competent and mature officers of sound judgment who are familiar with board procedures and, in particular, with the regulations and instructions pertaining to physical evaluation boards and physical standards. A physical evaluation board considering the

case of a party who is a member of the naval service on extended active duty shall consist of three commissioned officers as members, two of whom shall be non-medical officers and one of whom shall be a medical officer. There shall also be appointed a counsel for the board, and, unless waived by the party, a counsel for the party. There shall not be such disparity in rank and experience among the members of the board as might tend to operate to inhibit and influence junior members in expressing their opinions. When the party whose physical fitness is under consideration is a member of the regular Navy or the regular Marine Corps, two members shall, whenever practicable, be semor in rank to such party. In the absence of objection by the party, the semority of the members of the board shall be considered as waived. Whenever the board acts on the case of a member of a Reserve component, all members of the board shall be senior to the party, and, where possible, two of the members shall be Reserve officers.

(b) Limitation on medical members. No medical officer shall act as a medical member of a physical evaluation board who has had direct charge of the case of the party concerned immediately preceding appearance before the board or who was a member of a board of medical officers which reported on the party concerned.

(c) Limitation on non-medical members. Dental officers, officers of the Medical Service Corps and officers of the Nurse Corps are considered as non-medical officers as used in this chapter, but none shall act as non-medical members of a physical evaluation board unless the party concerned is a member of the same corps. When the party concerned is a member of the Navy, the non-medical members shall, if practicable, be officers of the Navy. When the party concerned is a member of the Marine Corps, the non-medical members shall, if practicable, be officers of the Marine Corps.

(d) Counsel for the board. The counsel for the physical evaluation board will be a competent, mature officer of sound judgment, who is familiar with board procedures and, in particular, with the regulations and instructions pertaining to physical evaluation boards.

(e) Counsel for the party. Designated counsel for the party concerned will be a competent, mature commissioned officer or chief warrant officer of sound judgment, who is familiar with board procedures and, in particular, with the regulations and instructions pertaining to physical evaluation boards and physical standards. Counsel for the party may be waived by the party concerned unless representation by counsel is mandatory pursuant to § 725.8 (b) (5) A mentally competent party, the next of kin, person to be notified in case of emergency, or legal guardian of a mentally incompetent party may obtain the services of civilian or naval counsel, other than the designated counsel, to act for the party, provided that the employment of such counsel does not result in expense to the Government or in unreasonable delay of board proceedings. In every case in which counsel is mandatory pursuant to § 725.8 (b) (5), counsel shall be a member of the bar of a Federal court or the highest court of a State.

§ 725.7 Orders for appearance. Orders directing or authorizing a member of the naval service who is on extended active duty to report to a physical evaluation board shall be issued as prescribed in the appropriate regulatory publications for the Naval Establishment, including, when such orders involve entitlement to travel allowance, current instructions relating thereto.

§ 725.8 General instructions—(2) Duties and responsibilities of the Physical Evaluation Board. (1) Senior member. The officer senior in precedence among the members of a physical evaluation board considering any one case shall act as the presiding officer of the board. He shall take appropriate action to preserve order in open sessions of the board and to insure that the proceedings are conducted in a dignified and judicial manner. He will rule upon all interlocutory questions except challenges. His rulings on interlocutory questions may be objected to by any other member of the board, in which case the matter will be decided by a majority vote of the board members in closed session. For good reason he may recess or adjourn the board or grant a continuance in the case. He shall preside over closed sessions of the board and speak for the board in announcing its recommended findings and the result of any vote upon challenge or other interlocutory question. He shall authenticate the record of the board proceedings except that in his absence the record may be authenticated by any other member of the board who acted in the case.

(2) Members in general. It is the responsibility of each member of the board to weigh and impartially to examine the evidence presented in a case and to make recommended findings, each according to his conscience, and in conformity with applicable laws, regulations, and estab-lished policies. Each member has an equal voice and vote with other members in deliberating upon and deciding all questions submitted to vote. Each member may question witnesses in an order prescribed by the senior member. Members of the board may discuss the case freely in closed session, but except as authorized to be set forth in the record of proceedings pursuant to this part, the opinions expressed by any member in closed session shall not be disclosed.

(3) Counsel for the board. The officer designated as counsel for the physical evaluation board shall, in every case before the board, assemble, prepare, and present all available evidence which is relevant to the issues to be decided by the board. This shall include, but not be limited to, the medical records, reports of medical boards, statements of service, reports and proceedings pursuant to chapters III and IV, 1955 Naval Supplement to the Manual for Courts-Martial, United States, 1951, and the current disciplinary status of the party concerned. He shall examine witnesses who appear before the board. In accordance with procedures prescribed by competent authority, he shall secure or request wit-

nesses to appear before the board and shall obtain depositions, affidavits, or statements which may aid the board in its decision of the issues before it. He shall notify the board members, witnesses, counsel for the party, and reporter of the time and place fixed for the hearing and make necessary arrangements to permit a proper hearing to be held. He shall insure that the records of the party concerned are furnished to the medical witnesses for examination prior to the hearing and shall perform such other duties as may be required by the senior member of the board. It is his specific responsibility to insure that the board has before it sufficient information to ascertain as accurately as practicable the circumstances in which the party concerned incurred his disability, the extent of the disability, and where it appears that the disability existed prior to the party's entrance into active duty, its extent at the time of entrance into active service, and all other pertinent circumstances relating to the party's disability. He shall, under the direction of the board, be responsible for preparation of the record of proceedings and shall, prior to the senior member. sign the record of proceedings as an authentication of its correctness. The standards of conduct for the counsel for the board shall be the same as prescribed for counsel before naval courts-martial (see § 719.3 of this chapter)
(4) Counsel for the party. The desig-

nated counsel for the party shall represent the party concerned before the physical evaluation board. The status of counsel for the party shall not lapse with the termination of the board's proceedings but shall continue until final determinations and dispositions prescribed by law have been effected in the case of the party concerned. Counsel will confer with the party as soon as practicable in order to advise him of his rights and to prepare a case in accordance with the legitimate desires and the best interests of the party. He will request the counsel for the board to arrange for the attendance of necessary witnesses or other specifically desired evidence and will assist in the procurement and presentation of any available evidence which will support the posi-tion of the party concerned. He shall perform such other duties as usually devolve upon counsel for an interested party before a formal fact-finding body and will guard the interests of the party by all honorable and legitimate means. In cases in which representation by counsel is not mandatory pursuant to paragraph (b) (5) of this section and the party concerned has waived his right to counsel, such party may act as his own counsel. Where counsel other than the designated counsel has been obtained to represent the party, the designated counsel may act as associate counsel if desired as such by individual counsel. The standards of conduct for counsel for the party shall be the same as prescribed for counsel before naval courts-martial (see § 719.3 of this chapter)

(5) Board reporter interpreter and orderly. The convening authority shall provide qualified reporters, and where necessary or requested by counsel for

the board, an interpreter or an orderly or both in the same manner as provided for courts of inquiry (see section 0302a (3) and (4), 1955 Naval Supplement to the Manual for Courts-Martial, United States, 1951) Such individuals shall act in the same capacity as in the proceedings of a court of inquiry.

(b) Procedure—(1) In general. The proceedings of physical evaluation boards shall be conducted in accordance with instructions set out in this chapter and in accordance with chapter III, 1955 Naval Supplement to the Manual for Courts-Martial, United States, 1951, insofar as practicable except that an oath or affirmation need not be administered to the members of the board or the counsel.

(2) Personal appearance. The party concerned shall appear personally before the board unless there is a recommendation by a medical board or a determination by the physical evaluation board that to do so would be detrimental to his health. In addition to the fact that it may contsitute a military offense, failure to appear when so directed or authorized shall be considered as a waiver of the right of the party concerned to appear before the board unless it is reasonably shown that such failure was through no fault of the party. The board may at its discretion, however, waive the appearance of the party if so requested in writing by the party concerned. Such request shall be appended to the record of proceedings by the board.

(3) Challenges. Members of a physical evaluation board may be challenged through the same procedure and for the same reasons as prescribed for members of a court of inquiry (see section 0302c (3), 1955 Nayal Supplement to the Manual for Courts-Martial, United States, 1951)

(4) Full and fair hearing. Every party whose case is being considered by a physical evaluation board shall be deemed to have demanded a full and fair hearing and shall be granted such unless he has waived in writing his right thereto. When a party who has been directed to appear before a board, through his own fault fails to do so and his absence has not been authorized by the board. the absence will not be excused and he will be deemed to have relinquished his demand for a full and fair hearing. The requirements for a full and fair hearing shall include, but shall not be limited to. the right of the party concerned: To be present in person unless to do so would be detrimental to his health, to be represented by qualified counsel during all stages of the proceedings until final action on the case is effected: to challenge members for cause; to present evidence in his own behalf; to secure witnesses, depositions, affidavits and statements on relevant issues insofar as practicable; to cross-examine witnesses; to present or have presented arguments in his behalf; to have the issues in his case decided only on evidence adduced and presented in the hearing; to file a rebuttal to the recommended findings of the physical evaluation board, and in certain circumstances to file a rebuttal to the recommended substitute findings of the Physical Review Council or a petition for appeal to the Physical Disability Appeal Board. The party may testify in his own behalf or may be called as a witness by the board. Not less than three days prior to the date set for the hearing, all relevant rules and regulations, including the standard schedule of rating disabilities in current use by the Veterans Administration, and all records and papers pertaining to the case shall be made available to the party concerned or his counsel, as appropriate, who shall have the right to inspect such rules, records and papers and to make notes therefrom as may be necessary in the preparation of the case. The party concerned or his counsel may, in writing, waive the right to the three-day inspection period and, upon the filing of such waiver, the board may proceed to hear the case. Failure of the party concerned to utilize one or more of the aspects of a full and fair hearing shall not be considered as a waiver of other such aspects.

(5) Counsel for the party mandatory. The physical evaluation board shall not consider the case of any party who is not represented by qualified counsel where a medical board has recommended that personal appearance before the board or the disclosure to the party of information relative to his physical disability would be deleterious to his health. If, during the course of the proceedings. the board shall determine that further attendance of the party may be deleterious to his health or that the party is not mentally competent to represent himself, the board shall, if the party is not represented by qualified counsel, immediately adjourn and shall request competent authority to designate qualified counsel to represent the party. In subsequent proceedings in such case the physical evaluation board may be composed of the same or different members.

(6) Mentally incompetent party. Upon receipt of a case in which previously it has been found that the party concerned is mentally incompetent, in that he is mentally incapable of managing his own affairs, or in which the physical evaluation board is of the opinion that the party is so mentally incompetent, further proceedings will be held in abeyance until the next-of-kin, the person to be notified in case of emergency, or the guardian (where appointed) has been notified that he or she may appear and provide counsel in behalf of the party. Such person shall be notified, by registered mail or by registered air mail, if it will facilitate delivery, with return receipt requested, of: the place, date, and hour scheduled for the hearing and that request may be submitted for an extension of time or for a more convenient date; the name, rank, and official address of the officer designated to represent the party the right of the addressee, at no expense to the Government, to be present at the hearing and to be represented by civilian or naval counsel of his or her own selection; and the right of the addressee to procure and introduce witnesses, to obtain documentary evidence, and to take such other action as may be deemed

necessary in the interests of the party. The hearing will be held at the time scheduled when no reply is received from the person so notified provided that the registered mail receipt indicates that the addressee has received notification. The date for the hearing generally will be two weeks from the date of mailing the notification but may be extended by the senior member upon written request. All correspondence, including the notification, the reply, if any, and the registered mail receipts will be appended as exhibits to the record of proceedings.

(c) Evidence. (1) A physical evaluation board shall consider all documentary evidence transmitted to it by proper authority. The board may, in addition, require and examine such records as may be in the files of the Navy Department that relate to the issues before the board. All evidence having a probative value as to the determination of issues before the board may be considered. All testimony shall be taken under oath or affirmation. The oath or affirmation shall be administered by the counsel for the board in a form as follows: "You swear (or affirm) that the evidence you shall give in the matter now before this board shall be the truth, the whole truth and nothing but the truth. So help you God.

(2) In the administration of an affirmation, the closing sentence of adjuration will be omitted. The board may take official notice of any generally accepted medical fact or principle and of any fact which may be judicially noticed by courts-martial. In consideration of the weight or probative value to be accorded evidence, the members of the board are expected to utilize their background and experience, their common sense and their knowledge of human nature and behavior. The fact that a witnes is the party whose case is before the board does not condemn him as unworthy of belief, but does create in him an interest greater than that in any other witness, and to that extent affects the question of credibility. It is a general rule that the relations of a witness to the matter to be decided are legitimate subjects of consideration in respect to the weight to be given to his testimony. In every case the testimony of the party concerned should be considered in connection with all the evidence adduced and given such weight as the board may believe it merits. When the testimony presented at the hearing indicates that the party claims to have disabilities not disclosed by the official medical records or presents evidence sharply in conflict with official medical records, and the issue thus drawn is not one that can be readily resolved by the observation of the board, there should be further development of the case by requesting further physical examination, special studies, or further investigation by appropriate agencies; and the hearings should be continued until such development has been accomplished. Findings and recommendations of the board should be based upon evidence consistent with a reasonable probability of truth.

(d) Definitions and presumptions— (1) Fitness for duty. In the absence of

convincing evidence to the contrary, a party before a physical evaluation board is presumed fit and physically qualified to perform the duties of his rank, grade or rating. The presence of physical disability or the fact that the party concerned is currently on the sick list or hospitalized does not necessarily require a finding of unfitness for duty. If the board is of the opinion that the party concerned will be fit for duty after a reasonable period of time, such party should be considered as fit for duty. On the other hand, a finding of unfitness for duty is to be made when the evidence discloses that the member is not physically capable of performing all the duties of his rank, grade or rating to a degree that would reasonably fulfill the purposes of his employment.

(2) Physical disability. disability" as used in this chapter, is any manifest or latent impairment of function due to disease or injury regardless of the degree of impairment. term "physical disability" includes mental diseases other than inherent defects such as behavior disorders, personality disorders, and primary mental deficiency. "Impairment of function" is any lessening or weakening of the capacity of the body, or any of its parts to perform that which is considered by accepted medical principles to be normal activity of the bodily economy. "Manifest impairment" is that which is accompanied by signs or symptoms, or both. "Latent impairment" is that which is not accompanied by signs or symptoms but which is of such a nature that there is a reasonable and moral certainty, according to accepted medical principles, that signs or symptoms, or both, will appear within a reasonable time.

(3) Accepted medical principles. "Accepted medical principles" shall be considered to be fundamental deductions consistent with medical facts and based upon the observation of a large number of cases. To constitute accepted medical principles, the deductions must be so reasonable and logical as to create a moral certainty that they are correct.

(4) Incurred while entitled to receive basic pay. Physical disability due to the natural progress of disease or injury is "incurred" when the disease or injury causing the disability is contracted. Physical disability in excess of that due to natural progress of the disease or mury is considered due to aggravation and as such is "incurred" when the disease or injury is aggravated. "While entitled to receive basic pay" encompasses all types of duty which entitle the party concerned to receive active duty pay, and any duty without pay which, by law, may be counted the same as like duty with pay (see section 240, Armed Forces Reserve Act of 1952; 50 U. S. C. 971) Nothing contained in this subsection shall be construed to entitle any party not on extended active duty, who at the time of his separation from active duty was considered physically fit for duty, to benefits under Title IV of the Career Compensation Act of 1949 (37 U. S. C. 271-285) by reason of an increase in disability occurring while

the party is not entitled to receive basic—tion as opposed to the natural progress pay.

(5) Intentional misconduct or willful neglect. "Intentional misconduct" and "willful neglect" are terms which are descriptive of "misconduct" as defined in chapter IV, 1955 Naval Supplement to the Manual for Courts-Martial, United States, 1951. See § 725.26.

(6) Unauthorized absence. thorized absence" as used in this chapter is absence from duty without authority such as that contemplated under the disciplinary laws applicable to the uniformed service concerned at the time

of its commission.

- (7) Proximate result of the performance of active duty. Any disability incurred in line of duty which reasonably may be assumed to have been the result of the performance of military duties is considered to be the proximate result of the performance of active duty. A determination to such effect is not precluded simply because the party concerned was in a leave or liberty status or temporarily absent with authority from his immediate job when the disability was incurred. Any physical disability resulting from disease incurred in line of duty shall be presumed to be the proximate result of the performance of active duty unless it is shown by clear and convincing evidence, including generally accepted medical principles, that to assume that it was the result of military duties is unreasonable. However, for a party who is on extended active duty, any disability shown to have been incurred in line of duty during a period of active service in time of war or national emergency shall be considered to be the proximate result of the performance of active
- duty.
  (8) Permanent nature of disability. Disability "may be of a permanent nature" when, based on medical experience in like cases, it is considered likely that the party concerned will recover to an extent which will permit him to perform duty commensurate with his rank, grade or rating within a five year period from the date of retirement or separation for physical disability or that within the five-year period the disability, if currently ratable at less than seventy-five percent in accordance with the standard schedule of rating disabilities in current use by the Veterans Administration, will change in degree; or that within the fiveyear period the disability, if currently ratable at seventy-five percent or more in accordance with such schedule, may fall below such percentage. Where none of the above contingencies is likely to occur, the disability is considered as disability which "is of a permanent nature"
- (9) Line of duty. Presumptions and definitions set forth in chapter IV, 1955 Naval Supplement to the Manual for Courts-Martial, United States, 1951, relating to the incurrence of disease or mjury in line of duty (see § 725.26) are applicable to this part. In addition thereto, there exists a presumption rebuttable by clear and convincing evidence, including generally accepted medical principles, that any increase occurring while in active service in the extent of a disability is due to aggrava-

of the disease or injury.

(10) Recommended findings. As used in this chapter the term "recommended findings" means recommended determinations of fact which are advisory only. No findings, recommendations, decisions, or modifications thereof, made by any body established under this chapter, shall in any case be considered as conclusive or final or not subject to modification by competent authority until final disposition of the case pursuant to findings and recommendations approved by the Secretary of the Navy has been effected.

(11) Extended active duty. The term "on extended active duty," when used in this chapter shall have its traditional meaning when applied to members of reserve components and when applied to members of the regular Navy and regular Marine Corps shall mean a status of being entitled to receive basic pay.

(e) Recommended findings. A physical evaluation board, after having considered and deliberated on all the evidence before it, shall announce, through the senior member, that in the opinion of the board the following findings are supported by the evidence and that it is the recommendation of the board that

such findings be approved:

(1) That the party, who is entitled to receive basic pay, is unfit (fit) to perform the duties of his rank, grade or rating, and, if unfit, that such unfitness is by reason of physical disability (a condition not a physical disability). (If the party is found fit, or if the unfitness is solely by reason of a condition not a physical disability, no further findings are required.)

(2) Where the party is found unfit by reason of physical disability, that his disability was (was not) incurred while he was entitled to receive basic pay.

- (3) List the diagnosis of each condition causing disability in the terminology set forth in Joint Armed Forces Classification and Basic Diagnostic Nomenclature together with the following information: The Veterans' Administration Diagnostic Code Number; that each disability is (is not) due to the party's intentional misconduct or willful neglect; that each disability was (was not) incurred during a period of unauthorized absence; that for a party with less than eight years' active duty, each disability was (was not) the proximate result of the performance of active duty. the percentage of each disability at the time of evaluation less the percentage of disability which existed upon entry into active service or which was incurred in a period of unauthorized absence or which otherwise was incurred not in line of duty, if any, and the net resulting disability rating, if any, existing at the time of evaluation.
- (4) In the case of any party serving on active duty in a retired status, in addition to the foregoing, the board shall make a finding as to the percentage of disability incurred while the party was so serving on active duty in a retired status.
- (5) Set forth, on the basis of the resulting disability rating listed under (3)

above, the final percentage of such of the party's disability as may be ratable, if any, computed in accordance with the standard schedule of rating disabilities in current use by the Veterans' Administration, and whether accepted medical principles indicate that such disability "may be of a permanent nature" or that

it "is of a permanent nature."

(f) Minority report. Each recommended finding made pursuant to this section concurred in by a majority of the board shall constitute the action of the board. Any dissenting member of the board will make a minority report concerning those particulars in which he does not agree with the action of the board. In case the board is unable to arrive at a conclusion, it shall adjourn and notify the convening authority of such circumstances. In such event, the convening authority may refer the case for consideration to a board composed of different members or he may return it to the original board for further consideration.

(g) Basis for recommended findings. (1) It is essential that the record clearly reflect facts sufficient to form the basis for the recommended findings. It is not intended that the board should state in the record that it believed one witness and disbelieved another or why it reached a certain conclusion based on evidence of record which is not sharply in conflict. On the other hand, it is essential that there be no hiatus as to the basis for conclusions. Hence, should the board resort to the taking of official notice of a generally accepted medical fact or principle or of any other fact of which a court-martial might take judicial notice, such fact or principle shall be set forth in the record.

(2) Further, where any doubt may exist as to which of several different ratings should be assigned on the basis of the relative severity of the disability, the reasons for the assignment of the particular percentage should be set out. The board may upon its own motion at any time prior to final adjournment in a case, set aside its previous recommended findings, consider further evidence, and make new recommended findings, but in such event the basis for the action of the board shall be set forth in the record of proceedings.

(h) Rebuttal. (1) A physical evaluation board shall, when it arrives at its recommended findings, advise counsel for the party and the party concerned thereof, that such recommended findings do not indicate what the final determination of the Secretary of the Navy will be, and that they are communicated to him only for the purpose of filing a rebuttal if he so desires. The party or his counsel shall be afforded five days exclusive of Sundays and holidays, after receipt of a copy of the record of proceedings of the board, in which to file a rebuttal. A rebuttal will set forth specifically the recommended findings of the board with which the party or his counsel does not concur together with proposed alternate recommended findings which are acceptable to the party.

(2) It is not mandatory, but desirable, that a brief, setting forth the legal and factual basis for such non-concurrence

or any other request for relief, be included in the rebuttal. In any case where a physical evaluation board is directed to conduct a new hearing or proceedings in revision as prescribed in paragraph (j) of this section and the party or his counsel files a rebuttal to the recommended findings arrived at in such proceedings, the rebuttal shall operate to afford the party an automatic appeal to the Physical Disability Appeal Board: Provided, (i) The recommended findings of such Physical Evaluation Board differ in a material respect, detrimental to the party, from any prior recommended findings made in the case by a physical evaluation board, and (ii) the subsequent recommendations of the Physical Review Council differ in a material respect, detrimental to the party, from the relief sought in his rebuttal.

(i) Preparation, authentication and forwarding of record. The record of proceedings of a physical evaluation board shall be prepared in accordance with chapter III, 1955 Naval Supplement to the Manual for Courts-Martial, United States, 1951, insofar as applicable. After authentication, such record, together with all documents which were before the board, including a rebuttal, if filed, shall be transmitted to the Physical Review Council. A copy of the record of proceedings shall be furnished the party or his counsel. The recipient of such copy of the record of proceedings shall give a dated receipt therefor.

(j) Revision proceedings and new hearings. In the event that a physical evaluation board is directed to conduct a new hearing, such hearing shall be conducted and the record prepared in. the same manner as if the board were meeting in the first instance. The record of proceedings in such case shall be prefixed to the original record. A board in revision shall, where practicable, consist of the same members who previously acted upon the case and shall proceed as instructed by the referring authority. A board conducting a new hearing shall consist of different members than those who previously acted upon the case.

(k) Action subsequent to forwarding the record. In the event any cognizant authority shall receive information, subsequent to the forwarding of a record of proceedings of a physical evaluation board and prior to final action thereon, that the party concerned has, following his hearing before such board, committed an offense or offenses such as are believed by the cognizant authority to have a possible bearing on the case and should therefore be brought to the attention of the Physical Review Council, incurred additional disability from that presented at the time of his hearing, or suffered an increase in the disability that was evaluated, or that his status has changed in any respect which might affect the action of the Secretary of the Navy on the record of proceedings, such authority shall immediately forward such information to the Physical Review Council by dispatch, with information copies to the Chief of Naval Personnel or the Commandant of the Marine Corps. as appropriate, and to the Judge Advocate General. Such dispatch shall be followed as soon as practicable by a complete report of the matter, together with recommendations concerning the action to be taken. Upon a change in his status occurring subsequent to his hearing before a physical evaluation board and prior to final action thereon, which, in his opinion, might affect the action of the Secretary of the Navy, the party concerned may forward information of such change in the manner provided above.

CASES INVOLVING MEMBERS OF THE NAVAL SERVICE NOT ON EXTENDED ACTIVE DUTY

§ 725.9 Composition. A physical evaluation board considering the case of a member or former member of the naval service not on extended active duty shall have the same composition as provided in § 725.6 except that in cases arising under section 302 of the Servicemen's Readjustment Act of 1944, as amended (38 U.S. C. 6931), the physical evaluation board, which acts in the capacity of the former Naval Retiring Board, shall have five commissioned officers as members. three of whom shall be non-medical officers and two of whom shall be medical officers.

§ 725.10 Orders for appearance. Orders directing or authorizing a member of the naval service who is not on extended active duty to report to a physical evaluation board shall be issued in conformity with regulatory publications for the Naval Establishment or as prescribed by the Chief of Naval Personnel or the Commandant of the Marina Corps, as appropriate. Orders directing or authorizing an officer or former officer of the naval service, consideration of whose case arises under section 302 of the Servicemen's Readjustment Act of 1944, as amended, to report to a physical evaluation board shall be issued by direction of the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate. Concurrently with the issuance of orders under this section, the issuing authority shall forward a letter to the appropriate physical evaluation board setting forth the law under which the individual concerned is eligible to have his case considered and, in cases arising under section 302, supra, and cases not specifically covered by the categories set forth in this chapter, the issues to be determined by the board and the phraseology to be employed in making findings concerning such issues.

§ 725.11 General instructions—(a) In general. Physical evaluation boards acting in cases of members or former members of the naval service who are not on extended active duty shall be governed by the procedural provisions of § 725.8 and shall be conducted and the record prepared and forwarded in the same manner as if the party concerned were on extended active duty except that recommended findings or findings on the issues, as the case may be, shall be made in conformity with this section.

(b) Servicemen's Readjustment Act cases. (1) Members of a physical evaluation board convened to act in cases arising under section 302 of the Servicemen's Readjustment Act of 1944, as amended (38 U.S.C. 693i) shall be sworn as follows:

You, and each of you, do solemnly swear (or affirm) that you will honestly and impartially examine and report upon the case

about to be examined by the board.

(2) The oath shall be administered to the members by the counsel for the board. Findings on the issues shall be made in the form prescribed by the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, in the orders which authorize the party concerned to appear before the board.

(c) Cases arising under Section 402 (c) of the Career Compensation Act. Physical evaluation boards acting in cases arising under section 402 (c) of the Career Compensation Act of 1949 (37 U. S. C. 272 (c)) shall make recom-

mended findings as follows:

(1) That the party concerned is unfit (fit) to perform the duties of his rank, grade, or rating, and, if unfit, that such unfitness is by reason of physical disability resulting from an injury (physical disability not resulting from an injury) (a condition not a physical disability) (If the party is found fit or if the unfitness is solely by reason of physical disability not resulting from an injury or a condition not a physical disability, no further findings are required.).

(2) List the diagnosis of each condition causing disability resulting from an mjury in the terminology set forth in Joint Armed Forces Statistical Classification and Basic Diagnostic Nomenclature together with the following information: the Veterans Administration Diagnostic Code Number; that each disability was (was not) the result of intentional misconduct or willful neglect of the party that each disability was (was not) the result of the performance of full-time training duty, other full-time duty, mactive duty training, or active duty other than extended active duty, as the case may be; the percentage of each disability at the time of evaluation less the percentage of disability which existed upon entry into such status or which was otherwise not incurred as the proximate result of the performance of such duty, if any, and the resulting disability rating, if any, existing at the time of evaluation.

(3) In the case of any party serving on active duty other than extended active duty in a retired status, in addition to the foregoing, the board shall make a finding as to the percentage of disability incurred while the party was so serving

in a retired status; and

(4) Set forth, on the basis of the resulting disability ratings listed under subparagraph (2) of this paragraph, the final percentage of such of the party's disability as may be ratable, if any, computed in accordance with the standard schedule of rating disabilities in current use by the Veterans' Administration, and whether accepted medical principles indicate that such disability "may be of a permanent nature" or that it "is of a permanent nature."

(d) Re-evaluation Career Compensation Act cases. Physical evaluation boards acting in cases of members of the naval service on the temporary disability

retired list who are not on extended active duty shall make findings and recommendations as follows:

(1) That the party concerned is physically unfit (fit) to perform the duties of his rank, grade or rating and, if unfit, that such unfitness is by reason of physical disability (a condition not a physical disability). (If the party is found physically fit or if the unfitness is solely by reason of a condition not a physical disability, no further findings are required.)

(2) Where the party is found unfit by reason of physical disability, recommended findings will be made as prescribed under paragraph (c) of this section or §§ 725.8 (e) as appropriate, except that for conditions and the natural sequelae of conditions which were previously evaluated by a physical evaluation board approved by the Secretary of the Navy, and which continue to exist, recommended findings need be made only as to the percentage and permanency of the disability caused thereby.

(e) Armed Forces Reserve Act cases. Physical evaluation boards acting in cases arising under sections 225, 226 and 249 of the Armed Forces Reserve Act of 1952 (50 U.S. C. 949, 950 and 992) shall make a recommended finding only as to whether the party concerned is (is not) considered physically qualified for active duty in the Naval Reserve or the Marine Corps Reserve, as the case may be, together with the diagnosis of the disqualifying disability or defect set forth in Joint Armed Forces Statistical Classification and Basic Diagnostic Nomenclature; and, if the party be considered not so qualified, a recommendation as to whether such party be involuntarily discharged or separated from his reserve component in the event that he is not first transferred into the Retired Reserve of such component. In determining physical qualification for active duty, due consideration shall be given to the character of duty to which the party may be assigned in the event he should be ordered to active duty pursuant to law.

(f) Naval Reserve Act cases. Physical evaluation boards acting in cases arising under section 206 of the Naval Reserve Act of 1938, as amended (34 U.S. C. 854e), shall make a recommended finding only as to whether the party concerned is (is not) considered physically qualified for active duty in the Fleet Reserve or Fleet Marine Corps Reserve, as the case may be, together with the diagnosis of the disability or defect which disqualifies the party in the terminology set forth in Joint Armed Forces Statistical Classification and Basic Diagnostic Nomenclature, and if not so qualified, a recommendation that the party be transferred to the retired list of the Regular Navy or Marine Corps, as the

case may be.

(g) Miscellaneous cases. Physical 1 evaluation boards considering cases not covered in the above categories shall make recommended findings only with respect to issues designated by competent authority.

THE PHYSICAL REVIEW COUNCIL

§ 725.12 Convening authority. The Secretary of the Navy shall convene the Physical Review Council and additional panels thereof, if required.

§ 725.13 Composition. The Physical Review Council and additional panels of such Council, if appointed, shall consist of the Chief of Naval Personnel or his designated representative acting for him, or, when acting in cases involving personnel of the Marine Corps, the Commandant of the Marine Corps or his designated representative acting for him, the Chief of the Bureau of Medicine and Surgery or his designated representative acting for him, and the Judge Advocate General, or his designated representative acting for him, as members, and a recorder.

§ 725.14 Jurisdiction, The Physical Review Council shall have jurisdiction to act in any particular relating to or implementing its function.

§ 725.15 Function. The Physical Review Council is constituted to review records of proceedings of physical evaluation boards in the light of established medical and legal principles and personnel policies and to express its views thereon for the information of the Secretary of the Navy; to act upon reports of medical boards referred to it; and to perform such other duties as the Secretary of the Navy may from time to time direct. It is not the function of the Council to act as a board or to conduct hearings, and applications for personal appearance by parties concerned will not be entertained.

§ 725.16 General instructions-Procedure. After consideration of all the evidence concerning a case before it, and in the light of established medical and legal principles and personnel policles, the members of the Physical Review Council shall advise the Secretary of the Navy that they concur in the recom-mended findings of the physical evaluation board or that they do not concur. in whole or in part, in such recommended findings. In the latter case they shall, in lieu of the recommended findings in which they do not concur, present substitute or additional recommended findings for the consideration of the Secretary of the Navy, together with the basis for their action as prescribed for physical evaluation boards in § 725.8 (g) where the basis is not otherwise adequately set forth in the record of proceedings. In the event of disagreement between the individual members of the Council with respect to any aspect of a case, each member shall set forth in the report of the Council his views with respect to those aspects in which there is disagreement. The Council may, on its own initiative, take no action on the recommended findings of the physical evaluation board and return the case to a medical board for further study, to the physical evaluation board for a hearing in revision for correction of errors. for further development of the case, for reconsideration of its recommended findings, or to a different physical evalua physical evaluation board in a differ-grecommendations, final approval of ent area for another hearing.

(b) Authentication and forwarding of records. Action by the Physical Review Council on a record of proceedings of a physical evaluation board shall be prepared in appropriate form and shall be signed by all members and by the recorder. Cases not returned to a medical board or a physical evaluation board shall be forwarded to the Secretary of the Navy or referred to the Physical Disability Appeal Board, as appropriate.

(c) Referral to the Physical Disability Appeal Board—(1) Discretionary referral. The Physical Review Council or any member thereof, may, in its or his discretion, forward to the Physical Disability Appeal Board any case for further consideration. The Council shall give the party or his counsel notice of such referral with a brief statement of the reasons therefor.

(2) Referral on basis of Physical Review Council recommendation. Council shall forward a case to the Physical Disability Appeal Board for further consideration where final approval of the recommendations of the Council in lieu of the recommended findings of the Physical Evaluation Board would change final disposition of the case in a manner substantially detrimental to the party unless the party concerned or his counselconcurs in such recommendation of the Council or fails to file a rebuttal thereto within the time allowed. In the event that the Council proposes to make such recommendations, it shall notify the party or his counsel, as appropriate, of the substitute or additional findings which it proposes to submit to the Secretary of the Navy together with a brief statement of the reasons therefor, which shall include reference to any matter officially noticed by the Council if such substitute or additional findings are based thereon. Upon recepit of such notification the party or his counsel may file a rebuttal thereto, if he so desires. The rebuttal shall be submitted directly and expeditiously to the Council within five days, exclusive of Sundays and holidays, after the party or his counsel receives such notification. In exceptional cases, and upon request, the time of filing a rebuttal may be extended in the discretion of the Council.

(3) Referral on the basis of revision proceedings or a new hearing. In any case where, as a result of proceedings in revision or a new hearing by a physical evaluation board, recommended findings are made, final approval of which in lieu of prior recommended findings made in the case would change final disposition in a manner substantially detrimental to the party, and a rebuttal, as prescribed in § 725.8 (h) has been filed to the last physical evaluation board action, the Council shall refer the case to the Physical Disability Appeal Board for furtherconsideration unless the Council shall recommend action by the Secretary of the Navy which does not differ in a material respect, detrimental to the party, from the relief sought in the rebuttal.

(4) Recommendations not considered substantially detrimental to the party.

ation board for another hearing, or to As used in this section and § 725.8 (h) which would defer action on a case for a stated or an indefinite period, or retire the party temporarily for physical disability in lieu of permanent retirement for physical disability or separation, or retire the party permanently for physical disability in lieu of separation, or separate him for physical disability with severance pay in lieu of separation without severance pay, shall not be considered as substantially or materially detrimental to the interests of the party.

(d) Procedure in Servicemen's Readjustment Act cases. The Physical Review Council shall act in cases arising under section 302 of the Servicemen's Readjustment Act of 1944, as amended, (38 U. S. C. 693i), in advisory capacity only and shall, in such capacity, recommend to the Secretary of the Navy that the findings of such board be approved or disapproved, or that orders be issued in the case. In the event that other than approval is recommended, the reasons therefor shall be stated. action of the Council shall otherwise be prepared in appropriate form and shall be signed by all members and by the recorder. It shall be transmitted to the Judge Advocate General.

(e) Action on medical reports of periodic physical examinations of parties on the Temporary Disability Retired List. Upon receipt of a report of a periodic physical examination of a party on the temporary disability retired list, forwarded pursuant to § 725.23, the Physical Review Council shall evaluate such report. If less than five years have elapsed since the date of the placement of the name of the party on the temporary disability retired list and the Council considers that no change in the status of the party is indicated, no action shall be taken on such report. If the Council considers that a change in the status is indicated, or if the period of five years from the date of the placement of the name of the party on the temporary disability retired list will soon terminate, the Council shall refer the case to a physical evaluation board for re-evaluation. In the event, however, the Council determines from the report that the party concerned is physically fit to perform the duties of his rank, grade, or rating and the party concerned has indicated a desire to be found physically fit for the performance of his duties, the case may be referred directly to the Secretary of the Navy for his action thereon without consideration by a physical evaluation board.

(f) Action where party failed to report for final scheduled periodic physical examination. If five years will soon elapse since the date of the placement of the name of the party on the temporary disability retired list and the party has failed to report for his last periodic physical examination scheduled pursuant to § 725.23, the Physical Review Council shall consider available records pertaining to the physical condition of the party concerned and advise the Secretary of the Navy, on the basis thereof, whether in accordance with accepted medical principles it may be found beyond any reasonable doubt that the party concerned was, and would remain, unfit to perform the duties of his rank, grade. or rating by reason of permanent physical disability when he was temporarily retired for physical disability or when he was given a subsequent periodic physical examination, as the case may be: and if so, the percentage which may be assigned for the disability for which the party was temporarily retired in accordance with the standard schedule of rating disabilities in current use by the Veterans Administration, assuming such physical disability to have improved to the greatest extent consonant with accepted medical principles. In lieu of the foregoing action, however, the Council may in any case arising under this subsection where it is reasonable to conclude from the available records that the party concerned has willfully abandoned benefits under Title IV of the Career Compensation Act of 1949, as amended (37 U. S. C. 271-285), by repeated failures to report for his periodic physical examinations after receipt of proper notification or by other conduct which clearly manifests an intent to abandon such benefits, recommend that the Secretary of the Navy, on the basis of such evidence, determine that the party concerned has abandoned his rights to disability benefits pursuant to Title IV of the Career Compensation Act of 1949, as amended, and that the name of such party therefore be removed from the temporary disability retired list without further disability benefits pursuant to Title IV of the Career Compensation Act of 1949, as amended. Action under this subsection shall be prepared by the Council in such form as it may desire and shall be signed by all members and by the recorder. It shall be transmitted to the Secretary of the Navy prior to the end of the five-year period during which the name of the party concerned may be carried on the temporary disability retired list.

THE PHYSICAL DISABILITY APPEAL BOARD

§ 725.17 Convening authority. The Secretary of the Navy shall convene the Physical Disability Appeal Board:

§ 725.18 Composition. The Physical Disability Appeal Board shall consist of five commissioned officers, three of whom shall be non-medical officers and two of whom shall be medical officers, designated by the Secretary of the Navy, and a recorder. The appointing order convening the Physical Disability Appeal Board may list more than five members, in which case the following provision may be included in the order: "Only five members of this Board, three of whom shall be non-medical members and two of whom shall be medical members, are empowered to act in any one case." The senior officer designated as a member shall be the President of the Board. The recorder may be either a commissioned officer or a civilian in the employ of the Government. Whenever the Board acts upon the case of a member of a Reserve component, all members of the Board shall be senior to the party, and, where possible, a majority of the members

present and acting shall be Reserve officers.

§ 725.19 Jurisdiction. The Physical Disability Appeal Board shall have jurisdiction to act in any proper case referred to it pursuant to these regulations.

§ 725.20 Function. The Physical Disability Appeal Board is constituted to review certain records of proceedings of physical evaluation boards in the light of the action by the Physical Review Council and such contentions as may be raised in opposition to such action, applying established medical and legal principles and personnel policies as appropriate, and to express its views thereon-for the information of the Secretary of the Navy, and to perform such other duties as the Secretary of the Navy may from time to time direct.

§ 725.21 General instructions—(a) Procedure. The Physical Disability Appeal Board, upon concurrence of a majority of the membership, may cause a record to be returned to a medical board or a physical evaluation board for the same reasons that it may be returned by the Physical Review Council, but such record shall be returned via the Physical Review Council, Where the Appeal Board takes action other than to so return the record, such action will be based on that evidence which was adduced before the physical evaluation board unless the party or his counsel has been given opportunity to appear and present evidence before the Appeal Board, or has consented to the consideration of other evidence by the Appeal Board, or has waived his right for final disposition based only on the evidence before the physical evaluation board. Proceedings before the Appeal Board may be solely on the record or may be adversary in nature. In the former, the Appeal Board shall take action upon such evidence as it legally may consider, which shall be presented to the Appeal Board by the recorder. In an adversary proceeding the Appeal Board shall take action on the evidence in the same manner as in the former case except that it will also consider further arguments presented to the Appeal Board by appellate counsel for the party and, if desired by the President of the Appeal Board, by the recorder. Such arguments shall be submitted as prescribed by the President of the Appeal Board and may be either written or oral as he may direct. The President of the Appeal Board may, in his discretion, in any adversary proceeding, if requested, allow the party concerned or his legal representative to appear and present evidence before the Appeal Board, and such evidence, together with other evidence of probative value then presented by him or on behalf of the Government, may be considered by the Appeal Board in arriving at its decision. The nature of the proceedings before the Appeal Board in any particular case shall be as determined by the President of the Appeal Board-unless it is directed by the Secretary of the Navy that they be adversary in nature. The party concerned has no right to demand that proceedings before the Appeal Board be adversary in nature.

Disability Appeal Board shall render an advisory opinion for the Secretary of the Navy as to the appropriate recommended findings upon which it considers that final disposition of the case should rest. The Appeal Board may, in its discretion, set forth the basis for its opinion and shall do so in the same manner as prescribed for physical evaluation boards in § 725.8 (g) where the basis is not otherwise adequately set forth in the record. Any dissenting member of the Appeal Board shall make a minority report on those particulars in which he dissents. Such report shall be included in the record of the Appeal Board.

(c) Appellate- counsel, Appellate counsel for the party shall be designated by the Judge Advocate General and shall consist of one or more officers. In an adversary proceedings before the Appeal Board the party concerned may be represented by civilian counsel when it does not cause undue delay in the appeal proceeding and if provided by him or his representative at no expense to the Government. In such case the designated appellate counsel for the party, unless his assistance is requested by the civilian counsel, shall not act in the case. Within five days excluding Sundays and holidays after notification of the advisory opinion and any dissent rendered by the Appeal Board, appellate counsel may file an argument in rebuttal to the advisory opinion or dissent of the Appeal In exceptional cases and upon request the time for filing such argument may be extended in the discretion of the President of the Appeal Board.

(d) Authentication and forwarding of records. The record of proceedings of the Physical Disability Appeal Board shall be prepared in such form as the President of the Appeal Board may direct and shall be signed by all members and by the recorder. Arguments submitted in rebuttal to the actions of the Appeal Board shall be affixed to the record. The entire record shall be forwarded to the Secretary of the Navy. In cases where the recommendations of the Appeal Board differ in a significant respect from those of the Physical Review Council, the record will be resubmitted to the Council for comment.

#### PERIODIC PHYSICAL EXALUNATIONS

§ 725.22 Requirements. An individual whose name has been placed on the temporary disability retired list chall be given periodic physical examinations, not less frequently than every eighteen months during the period that his name is carried on such list, to determine whether the disability for which he was placed on such list has changed.

§ 725.23 Procedure. Orders shall be issued by the Chief of Naval Personnel or the Commandant of the Marine Corps. as appropriate, directing an individual on the temporary disability retired list to report to an appropriate command for a periodic physical examination. In the event the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, considers that it is not practicable for an individual to report for a

(b) Disposition. After consideration periodic physical examination, the exoff the evidence before it, the Physical amination may be otherwise conducted amination may be otherwise conducted or information as to the present physical condition of the individual may be otherwise obtained in such manner as the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, may prescribe. If an individual on the temporary disability retired list considers that there has been a change in his disability which would warrant consideration prior to his next scheduled periodic physical examination he may request the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, to issue orders for earlier consideration. Reports of such examination are primarily for the purpose of furnishing information upon which determinations can be made as prescribed in § 725.11 (d) and shall be made as prescribed by the Surgeon General of the Navy or as prescribed in the Manual of the Medical Department, as appropriate. When considered necessary, the examiner or examiners may request that the Bureau of Medicine and Surgery furnish the complete medical records of the individual under examination. The report of the examination shall be headed "Report of Periodic Physical Examination" and be submitted to the Physical Review Council via routine channels.

#### FINAL ACTION

§ 725.24 Action by the Secretary of the Navy. After considering the entire record of a physical evaluation board case, the Secretary of the Navy will make determinations in conformity with the applicable law and will direct the disposition of the party whose case has been considered. Except in cases under section 302 of the Servicemen's Readjustment Act of 1944, as amended (38 U. S. C. 6931), and except as the Secretary of the Navy may otherwise direct, the Judge Advocate General and the Assistant Judge Advocate General are authorized to take action herein prescribed for the Secretary of the Navy. The Secretary of the Navy, after considering the record of proceedings and findings of a physical evaluation board convened in cases arising under section 302 of the Servicemen's Readjustment Act of 1944, as amended, will approve or disapprove, or issue orders in such case.

§ 725.25 Relief from final action-(a) Generally. Upon execution of the direction of the Secretary of the Navy as to disposition of a case which has been considered pursuant to this chapter, such action becomes final and may not be changed, modified, set aside or reopened except upon one or more of the grounds, and in the manner, hereinafter set forth.

(1) Clerical mistalies. Clerical mistakes or mathematical miscalculations in the orders affecting disposition or other parts of the record of proceedings may be corrected by the Secretary of the Navy at any time on his own initiative or upon the patition of the individual whose case has been considered or any cognizant authority of the Naval Establishment after such notice, if any, as the Secretary of the Navy may direct.

(2) Other grounds for relief. Upon notice to the individual concerned and opportunity for hearing thereon or upon petition of the individual concerned, the Secretary of the Navy may, in his discretion, change or modify or may set aside his action directing the disposition of the individual and direct new proceedings in his case for the following reasons:

(i) Newly discovered evidence. Upon the presentation of newly discovered evidence which by due diligence could not have been presented prior to the effective date of disposition of the individual concerned, which relates to a fact in existence at the time of such disposition, which is not merely cumulative or corroborative and not such as merely to affect the weight of the evidence or the credibility of the witnesses, and which would have warranted a different action had it been presented:

(ii) Fraud, misrepresentation, or other misconduct. Upon a showing that the directed disposition of an individual was based upon the fraud, misrepresentation of material fact, or other misconduct of a party of such nature that in the absence thereof a different action would have been taken; and

(iii) Mistake of law. When it appears that the directed disposition of an individual was based upon a mistake of law which resulted in either an assumption of jurisdiction beyond the authority granted by law or a refusal to assume jurisdiction within the authority granted

by law.

(b) Procedure for obtaining relief. (1) Clerical mistakes. A clerical mistake or mathematical miscalculation which does not affect the disposition of the mdividual or change the computation of his disability retirement pay on the basis of percentage of disability may be corrected by the Secretary of the Navy without notice. If the correction of the error would affect the disposition or so change the computation of disability retirement pay, the individual shall be given reasonable notice and afforded an opportunity to be heard, if he shall request it, before such correction is made. Relief sought by an individual under this subparagraph shall be by petition addressed to the Secretary of the Navy set-

ting forth the error complained of and

the relief desired.

- (2) Relief on other grounds. When relief is sought on the grounds set forth in § 725.25 (a) (2), the individual concerned, his legal representative or the cognizant authority of the Naval Establishment shall address a petition to the Physical Review Council. The petition must be filed within five years from the effective date of the individual's disposition and shall set forth the relief desired and the grounds for such relief. When the petition is based upon evidence not of record in the Navy Department, such evidence shall be filed with the petion. The Physical Review Council, upon consideration of such petition, shall make recommendations to the Secretary of the Navy relative to granting such relief.
- (3) Hearing upon petition for relief. If the Physical Review Council, upon the consideration of a petition for relief,

shall deem it necessary that hearings be held upon any such petition, it may direct any physical evaluation board to hold such hearings; the record of which, without recommendations, shall be forwarded to the Physical Review Council.

(4) Effect of filing petition for relief and action thereon. The filing of any petition for relief shall not affect the directed disposition of an individual or suspend its operation until and unless the Secretary of the Navy shall so direct. Neither the action of the Secretary of the Navy upon a petition for relief nor any action taken by him pursuant to the proceedings on the reopening of a case shall operate to extend the time for application for review of the original disposition by a statutory board.

#### APPENDIX

§ 725.26 Excerpts from "Misconduct and Line of Duty" provisions of Chapter IV of the 1955 Naval Supplement to the Manual for Courts-Martial, United States, 1951, referred to in § 725.8—(a) General. An adverse finding as to misconduct and line of duty will not be applied in case of death, injury or disease as a punitive measure. Disciplinary action, if warranted, should be taken independently of any determination of misconduct or line of duty. A favorable finding of not misconduct and line of duty does not preclude separate disciplinary action.

(b) Nature of misconduct. Misconduct is wrongful conduct. Simple or ordinary negligence or carelessness standing alone does not constitute misconduct. As a general rule, the fact that an act violates a law, regulation or order does not, of itself, constitute a basis for a determination of misconduct. In order to support an opinion of misconduct. it must be found that the death, injury or disease: (1) was intentionally incurred, or resulted from such gross negligence as to demonstrate a reckless disregard of the consequences; and (2) was either immediately caused by the act under consideration, or set other events in motion, all constituting a natural and continuous chain of events, which caused the death, injury or disease; and (3) was the reasonably foreseeable or the likely result of such act. As indicated above, the wrongful conduct must be found to have been a proximate cause of the death, injury or disease, and to be a proximate cause the wrongful conduct must have been such that it could have been reasonably foreseen that death, injury or disease would likely result therefrom: If an intervening cause directly precipitated the death or disability but was not reasonably foreseeable at the time of the act of misconduct in question, the misconduct cannot be considered to have been a proximate cause of the resulting death or disability.

(c) Exception. Notwithstanding any of the foregoing provisions of this section, a finding of misconduct will normally be required in cases in which injury or death occurs while the individual is engaged in the theft or wrongful appropriation of any vehicle, or while he is voluntarily participating in the use of any vehicle, knowing it to have been

stolen or otherwise wrongfully appropriated.

(d) Presumption of not misconduct. In the absence of sufficient evidence to the contrary, it is presumed that death, injury or disease suffered by a person in the naval service was not the result of his misconduct. In order to overcome this presumption, there must be clear, and convincing evidence that the death, injury or disease was either the proximate result of the person's misconduct or that it was incurred in the circumstances noted in paragraph (c) of this section. Mere conjecture is not sufficient. Any reasonable doubt as to the misconduct status shall be resolved in favor of the deceased or disabled person.

(e) Line of duty. Injury or disease suffered while in active service, or disability or death proximately resulting therefrom, shall be considered to have been in line of duty unless the injury or disease is found to have been incurred: (1) As the result of the person's misconduct, or (2) While avoiding duty by deserting the service, or (3) While absent without leave materially interfering with the performance of military duties, or (4) While confined under sentence of court-martial which involved an unremitted dishonorable discharge, or (5) While confined under sentence of civil court following conviction of a felony as defined by the laws of the jurisdiction where convicted. The applicability of any of the foregoing enumerated conditions to the injury or disease precludes an opinion that the injury or disease, or death resulting therefrom, was incurred in line of duty. For the purposes of the foregoing definition, active service shall be construed to include extended active duty, active duty for training and any authorized leave or liberty therefrom, and inactive-duty training. The misconduct status is an integral part of the line of duty determination. opinion that the death, injury or disease was incurred in line of duty must be preceded by the opinion that the death, injury or disease was not the result of the person's misconduct. An opinion of "misconduct" precludes an opinion that the death, disease or injury was incurred in line of duty. An opinion of "not in line of duty" is not, however, inconsistent with a conclusion of "not misconduct." A finding of "not in line of duty" will be made where injury or disease or death resulting therefrom, is incurred while the person is in an unauthorized absence status which materially interferes with the performance of his military duties. Whether absence without leave materially interferes with the performance of military duties necessarily depends upon the facts of each situation to which must be applied a standard of reality and common sense. No definite rule can be formulated as to what constitutes material interference. Generally speaking, however, an absence in excess of 24 hours will be considered to be a material interference in the absence of evidence establishing the contrary. Similarly an absence of shorter duration will not be considered to be a material interference unless there is evidence to establish the contrary.

- (f) Presumption of line of duty. It is presumed, in the absence of clear and convincing evidence to the contrary, that an injury or disease was incurred in line of duty. This presumption applies when the person was examined upon entry into active service and such defect was not noted, and when there is no evidence in the medical record that the mjury or disease existed prior to commencement of, or return to, active Where disease or mjury was service. incurred prior to entry upon, or return to, active service and became a disability or resulted in death when aggravated due to service, the aggravation is a proper basis for finding line of duty.
- (g) Determinations as to misconduct and line of duty. Any one of the following determinations may be made as to misconduct and line of duty status:
- (1) In line of duty, not due to own misconduct
- (2) Not in line of duty, not due to own misconduct
- (3) Not in line of duty, due to own misconduct.
- (h) Mental irresponsibility—(1) General. In the absence of evidence to the contrary, there is a presumption that all persons are mentally competent. A person mentally incompetent with respect to a given act is not held to be responsible for that act, and mjury or death incurred as a result of such act is not considered to be the result of misconduct, unless the incompetency is shown to have resulted from his prior misconduct and was the proximate cause of the mjury or death. Death, mjury or disease incurred during a period of unauthorized absence will be held "in the line of duty" when it is determined that the person was not mentally competent at the time such absence commenced.
- (2) Suicide. In view of the strong human instinct of self-preservation, suicide or a bona fide suicide attempt is considered to be evidence of mental irresponsibility. Before the rules pertaining to suicide are applied, however, it must be established that the death or injury was the result of a suicidal act with suicidal intent, and in cases of doubt, any other reasonable explanation of the death or muy should be adopted. When it is determined that the death or mjury was a suicide or the result of a bona fide suicide attempt, and when no reasonable and adequate motive therefor is supplied by the evidence, the suicidal act itself rebuts the presumption of sanity and a conclusion of mental irresponsibility is in order. When the evidence indicates that the suicidal act was motivated by a reason that might prompt a rational person to take his own life, the question of sanity will depend upon all of the evidence pertaining to the mental competence of the person at the time of the suicidal act. Intentional self-inflicted injury, unaccompamed by a bona fide suicidal intent, is a suicidal gesture and such injury, in the absence of a showing of mental irresponsibility, is deemed to be the result of the victim's own misconduct.
- (i) Miscellaneous cases—(1) Venereal disease. Venereal disease of itself is not to be deemed due to misconduct if the

- person has complied with pertinent regulations requiring him to report and receive treatment for such disease.
- (2) Surgical and medical treatment. Disability or death shall be held to have been incurred as the result of misconduct if it resulted from an unreasonable refusal to submit to surgical or medical treatment.
- (3) Intoxication. Death or injury incurred as the proximate result of intoxication is considered to have occurred as the result of misconduct. In order for intoxication alone to be considered the basis for a determination of misconduct, there must be a clear showing that the person was intoxicated at the time of the injury or death and that the intoxication was a proximate cause thereof.
- (4) Alcoholism and drugs. Disability either sickness or disease, or death which is directly attributable to intemperate use of alcoholic liquor or habit-forming drugs, is the result of misconduct.
- 3. Section 750.1 is revised to read as follows:
- § 750.1 Definition. The term "employee of the Government", as used in §§ 750.1 to 750.16, includes members of the naval forces of the United States, officers or employees of the Navy, and persons acting on behalf of the Navy in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation.
- 4. Section 750.2 is revised to read as follows:
- § 750.2 Statutory authority. suant to, and subject to the limitations of, Part 2 of the Federal Tort Claims Act, Title IV of the Legislative Reorganization Act of 1946, approved August 2, 1946 (60 Stat. 843), repealed, revised, codified and re-enacted as a part of Title 23, United States Code, by Public Law 773, 80th Congress, approved June 25, 1948 (62 Stat. 982; 28 U. S. C. 2671-2680), as amended, the Secretary of the Navy, or his designee for the purpose, acting on behalf of the United States, is authorized to consider, ascertain, adjust, determine, and settle any claim for money damages of \$1,000 or less against the United States, accruing on or after January 1, 1945, for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant, in accordance with the law of the place where the act or omission occurred.
- 5. Section 750.8 (a) is revised to read as follows:
- § 750.8 Statutory authority for action.

  (a) Pursuant to, and subject to the limitations of, Part 3 of the Federal Tort Claims Act, Title IV of the Legislative Reorganization Act of 1946, approved August 2, 1946 (60 Stat. 843; 28 U. S. C. 931-934) as amended by the act of August 1, 1947 (Pub. Law 324, 80th Cong., 61 Stat. 722), repealed, revised, codified and re-enacted as a part of Title 28,

- United States Code, by Public Law 773, 80th Congress, approved June 25, 1948 (62 Stat. 928, 933, 937, 971, 973, 983; 28 U. S. C. 1254, 1255, 1346, 1402, 2402, 2411, 2412, 2674), as amended, the United States district court for the district where the plaintiff resides or wherein the act of omission complained of occurred, including the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, sitting without a jury, has exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on or after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred.
- (62 Stat. 982; 28 U.S. C. 2671-2630)
- 6. Section 750.17, preceding paragraph (a), is revised to read as follows:
- § 750.17 Definitions. As used in §§ 750.17 to 750.27: \* \* \*
- 7. Section 750.18 is revised to read as follows:
- § 750.18 Statutory authority. The. first section of the act of December 28, 1945 (59 Stat. 662; 31 U.S. C. 223d) makes applicable to the Navy the act of July 3, 1943 (57 Stat. 372; 31 U.S. C. 223b) as amended by the act of May 29, 1945 (59 Stat. 225; 31 U.S. C. 223b) and the act of June 28, 1946 (60 Stat. 332: 31 U.S. C. 223b) Pursuant to, and subject to the limitations of, this authority, as amended, the Secretary of the Navy and, subject to appeal to the Secretary of the Navy, such other officer or officers as he may designate for such purposes and under such regulations as he may prescribe, are authorized to consider, ascertain, adjust, determine, settle, and pay in an amount not in excess of \$1,000, where accepted by the claimant in full satisfaction and final settlement, any claim against the United States arising on or after May 27, 1941, when such claim is substantiated in such manner as the Secretary of the Navy may by regulation prescribe, for damage to or loss or destruction of property, real or personal, or for reasonable medical, hospital, and burial expenses actually incurred on account of personal injury or death, caused by military personnel or civilian employees of the Navy while acting within the scope of their employment, or otherwise incident to noncombat activities of the Navy, including claims for damage to or loss or destruction, by criminal acts, of registered or insured mail while in the possession of the military authorities, claims for damage to or loss or destruction of personal property bailed to the Government and claims for damages to real property incident to the use and occupancy thereof, whether under a lease, express or implied, or otherwise.

- 8. Section 750.19 (b) (7) is revised to read as follows:
- (7) Any claim arising on or after January 1, 1945, the cause of which has been determined to be the negligent or wrongful act or omission of an employee of the Government (as defined in § 750.1) while acting within the scope of his office or employment, and which is in all other respects within the cognizance of the provisions governing administrative settlement of Federal tort claims under Title 28, United States Code, and §§ 750.1–750.7.
- 9. Section 750.19 (b) (8) is revised to read as follows:
- (8) Any claim arising in a foreign country or possession thereof which is cognizable under the provisions of the act of January 2, 1942 (55 Stat. 880; 31 U. S. C. 224d) as amended, and regulations issued pursuant thereto.
- 10. Section 750.26 (a) is revised to read as follows:
- § 750.26 Claims, arising in foreign (a) There are no geographicountries. cal limitations upon the scope of application of the act of December 28, 1945, and §§ 750.17-750.27. The Foreign Claims Act of January 2, 1942 (55 Stat: 880; 31 U.S. C. 224d) as amended, and regulations issued pursuant thereto, however, have preemptive application to claims for damage to or loss or destruction of real or personal property, and for personal injury or death, caused by military forces or individual members thereof, whether military personnel or civilian employees, or otherwise incident. to noncombat activities of such forces, m a foreign country, to public property lo-cated therein, or to the privately owned property or to the persons or inhabitants of such country. Any claim which arises in a foreign country, therefore, and which is within the scope of the Foreign Claims Act, as amended, is precluded from consideration under the act of December 28, 1945, and §§ 750.17-750.27. Any claim which arises in a foreign country and is for any reason not cognizable under the Foreign Claims Act and the regulations issued thereunder, however, may be considered and paid under the act of December 28, 1945, and §§ 750.17-750.27 provided it is in all respects within the scope thereof.
- 11. Section 750.27 is revised to read as follows:
- § 750.27 Statute of limitations. No claim may be settled under the act of December 28, 1945, and §§ 750.17-750.27 unless it is presented in writing within one year after the occurrence of the accident or incident out of which it arises, except that
- (a) If such accident or incident occurs in time of war, or if war intervenes within one year after its occurrence, any claim may, on good cause shown, be presented within one year after peace is established; or
- (b) If such accident or incident occurred after June 23, 1950, and before the termination of the national emergency proclaimed December 16, 1950, any claim may, on good cause shown, be pre-

sented within one year after the termination of that national emergency or August 1, 1953, whichever is earlier.

(Sec. 1, 59 Stat: 662; 31 U.S. C. 223d)

- 12. Section 750.35 (d) is revised to read as follows:
- (d) The regulations in this part in no way modify the requirements of Navy Regulations; the Manual for Courts-Martial, United States, 1951, and the 1955 Naval Supplement to the Manual for Courts-Martial, United States, 1951 and the making of an investigation and report hereunder does not constitute or excuse compliance with any provision of Navy Regulations; the Manual for Courts-Martial, United States, 1951, and the 1955 Naval Supplement to the Manual for Courts-Martial, United States, 1951.
- 13. Section 750.38 is revised to read as follows:
- § 750.38 Duties of the investigating officer (a) It shall be the duty of the investigating officer, in making an investigation pursuant to the regulations in this part:
- (1) To consider all information and evidence obtained as a result of any previous investigation or inquiry into any aspect of the incident.
- (2) To conduct further investigation of the matter in a fair and impartial manner, covering all phases of the incident and giving consideration to its bearing on possible claims against or in favor of the Government and on other interests of the service, to the end that a comprehensive, accurate, and unbiased factual report of the incident may be made available to higher authority for such action as is required by the circumstances of the case.
- (3) To secure and consider signed statements from all competent witnesses on facts pertinent to the incident. Witnesses should be interviewed by the investigating officer at the earliest opportunity and he should obtain from them full statements. Statements from principal witnesses should be reduced to writing and their signatures obtained thereon if at all possible. The interests of the United States may be seriously prejudiced if the investigating officer fails to obtain such statements before witnesses lose their clear recollection or can be confused by questioning by persons with adverse interests.
- (4) To inspect the property damage and to interview injured persons or their representatives personally, and if such personal inspection and interview is not conducted, to state the reason therefor.
- (5) To ascertain the nature, extent, and amount of damage and to obtain all pertinent repair bills and estimates, or medical, hospital, and associated bills, as are necessary to the proper adjudication of any claim against or in favor of the Government which may arise from the incident for proper method of computing the amount of damages (see § 750.30) Claims for items of damages such as loss of earnings, pain and suffering, and temporary or permanent disability, arising under the Federal Tort Claims Act, require submission by the claimant of a

statement by his employer executed before a notary public, or where the claimant is in business for himself, a certified copy of the company records or where this is not available a sworn statement by the claimant.

(6) In all cases in which a suit against the United States is likely or is pending, and in all other cases in which it appears pertinent to determine liability, to obtain from the proper maintenance office the latest-report of material inspection of the Navy aircraft or motor vehicle that was conducted prior to the accident.

- (7) To secure from qualified persons of the activity concerned, or of another appropriate activity, statements con-cerning the extent of damage or injury and the reasonableness of the damages claimed. The investigating officer, if the injured person does not object, should have a physical examination made of the injured person at a military installation, to the extent of the adequacy of the personnel and facilities of such installation, when such examina-tion is considered necessary in connection with a claim incident to such injuries, provided that no expense for services or supplies from other federal agencies or civilian agencies is incurred with such examination. A copy of the report of such examination obtained from the medical installation will be included in the report of investigation or, if made subsequent to the forwarding of the latter report, will be forwarded to the same command as the report of investigation.
- (8) To reduce to writing and incorporate into a unified investigative report, prepared in triplicate, all pertinent testimony, exhibits, and any other evidence taken or considered. (See, however, the exception contained in § 750.39 (b).)
- (9) To furnish the proper claim forms to any person who inquires concerning the procedure for making claim against the Government as a result of a service-connected incident, and to advise such person where the claim should be filed and what substantiating evidence should accompany the claim.

(10) To submit the complete investigative report to his commanding officer as promptly as the circumstances permit; and in the case of an incident involving any personal injury or property damage estimated to be in excess of \$1,000, to submit immediately a proliminary report, containing such information as is at that time available. to his commanding officer for forwarding to reach the Judge Advocate General within twenty days of the occurrence of the incident under investigation. In a case where not all of the required information is immediately available, as in an accident resulting in personal injuries requiring extended periods of hospitalization or medical care, the investigative report shall be submitted promptly, containing all available information at the time of submission and shall be completed by means of a supplementary report or reports submitted as soon as the previously omitted information becomes available.

14. Section 750.39 is revised to read as follows:

§ 750.39 Contents of the investigative report. A written report of investigation will be made in each case, using standard forms whenever appropriate forms are available.

(a) Except in cases falling within the provisions of paragraph (b) of this section, the report shall be complete in every significant detail and will include particularly such of the following information as is pertinent:

(1) Date, time, and exact place the accident or incident occurred, specifying the highway, street, road, or intersection, including the streets between which

or the number of the block where the accident or incident occurred, or the number of miles and the direction from

the nearest town.

(2) A concise but complete statement of the circumstances of the accident or incident. Reference should be made to pertinent physical facts observed and to any material statements, admissions, or declarations against interest by any person involved.

(3) A statement-whether a claim has been or, if known, will be filed and, if so, the name and address of the claimant.

(4) A statement whether the claimant is the sole owner of the damaged property and, if not, the name and address of the owner, or part owners, and the basis of the claimant's alleged right to file the claim.

(5) Names, service numbers, grades, organizations and addresses of military personnel and civilian employees involved

as participants or witnesses.

- (6) Names and addresses of witnesses. (7) A statement whether military personnel and civilian employees were acting within the scope of their employment and the basis for such determina-
- (8) Accurate description of Government property involved, and nature and amount of damage, if any. If Government property was not damaged, that fact should be stated.
- (9) Accurate description of all privately owned property involved, nature and amount of damage, if any, and the names and addresses of the owners thereof.
- (10) Names, addresses, and ages of all civilians or military personnel injured or killed. Information as to the nature and extent of injuries, degree of permanent disability, prognosis, period of hospitalization, name and address of attending physician and hospital, and amount of medical, hospital, and burnal expenses actually incurred, occupation, and wage or salary of civilians mjured or killed. Names, addresses, ages, relationship, and extent of dependency of survivors of any such person killed or fatally injured should be stated.
- (11) If straying animals are involved. a statement whether the jurisdiction has "open range law" and, if so, reference to such statute.
- (12) A statement whether any person involved violated any State or Federal statute, local ordinance, or installation regulations and, if so, in what respect.

The statute, ordinance, or regulation should be set out in full.

(13) A statement whether a police investigation was made. A copy of the police report of investigation will be included if available.

(14) A statement whether any arrests were made or charges preferred, and the result\_of any trial in civil or military courts.

(15) The comments and recommendations of the investigating officer as to the existence of liability and as to the amount of the damage, loss or destruction, or the amount payable on account

of personal injury or death.

(16) As many exhibits or enclosures as are pertinent, and as may appear necessary or useful in the circumstances of each case, shall be obtained during the course of the investigation and shall be attached to the investigative report, forming a part thereof. The enclosures shall be numbered consecutively and shall be listed numerically in the investigative report in accordance with standard Navy correspondence procedure.

(b) In lieu of the formal investigation contemplated by § 750.38 and the detailed report described in paragraph (a) of this section, a more limited investigation and report may be made when the following circumstances exist:

(1) A claim has been presented for an amount of \$100.00 or less.

(2) The claim is cognizable under the Federal Tort Claims Act (§§ 750.1-750.7) or the Act of December 28, 1945 (§§ 750.17-750.27).

(3) The amount payable on the claim has been agreed upon. This limited report will take the form of a certification and should provide substantially as follows:

#### CERTIFICATE

. 195... I certify that I have investigated the accident (incident), that the facts fully substantiate the claim, and that I have taken the following action:

I further find that the amount claimed represents the claimant's loss and recommend payment under the provisions of §§ 750.1-750.7 NGCR (§§ 750.17-750.27).

> (Investigating officer) (Commanding officer) (Authorized adjudicating

Incls X Std Form 91.\* Police Report ----- Paid bill or estimate .\_ Other Approved for payment.

\*Must be included in all cases involving motor vehicle accidents.

In the space provided for noting the action taken by the investigating officer, he should describe very briefly the limited investigation upon which his recommendation is based, for example, information (estimates, etc.) received by telephone from interviewed Government driver driver, witnesses, etc.); inspected demaged property; violation of local law; etc.

15. Section 750.40 is revised to read as follows:

§ 750.40 Action by the commanding officer. The investigative report will be reviewed and, if necessary, returned to

the investigating officer for the correction of any omissions noted. If there is a legal officer available, the commanding officer should ordinarily use his services in reviewing and, if desirable, endorsing the report. If the report is in order, it shall be forwarded by endorsement, with any pertinent comments and recommendations. In cases in which the certificate report authorized by § 750.39 (b) is used, the commanding officer may indicate his approval of the certificate report by signing this report in the space provided thereon. One copy of the report shall be retained in the file of the local activity and shall be made available to safety officers for use in accident prevention and to superior commands upon request. The original and one copy of the report, together with all three copies of any claim filed, shall be forwarded by means of the aforementioned endorsement, without regard to chain of command, to the Commandant of the naval district in which the incident occurs, attention District Legal Officer. In cases where the incidents occur outside the geographical limits of any naval district, the commanding officer shall promptly forward such reports to the Judge Advocate General.

16. Section 750.41 is revised to read as follows:

§ 750.41 Action by the district legal officer (a) The district legal officer may, in his discretion, return the investigative report for such additional investigation and information as may be considered necessary. When satisfied with the report, the district legal officer shall endorse the investigative report with his recommendations as to whether any claim or claims should be paid, and in what amount, stating the legal basis for his recommendations.

(b) The commandant of the naval district or the district legal officer shall approve or disapprove the claims within his adjudicating authority (see § 750.42) as the law and the facts may warrant. In exceptional and unusual cases, even though the claim or claims may appear to fall within the adjudicating authority of the commandant and the district legal officer, the entire record, together with pertinent comments and recommendations, may be referred to the Judge Advocate General for appropriate action.

(c) In all cases not coming within the adjudicating authority of the commandant and the district legal officer, one copy of the investigative report shall be retained for the files and the original of the report, together with all related papers and all three copies of any claims filed shall be forwarded, with pertinent comments and recommendations, to the Judge Advocate General.

17. Section 750.42 is revised to read as follows:

§ 750.42 Approval of claims. (a) Claims cognizable under the provisions governing administrative settlement of federal tort claims under Title 28, United States Code, and §§ 750.1 to 750.7 shall be approved or disapproved, in whole or in part, by any of the following, all of whom are designated to administer those provisions of law for the Navy

- (1) The Judge Advocate General.
- (2) The Assistant Judge Advocate
- (3) The Director, Civil Law Division of the Office of the Judge Advocate General.

(4) The head, General Claims Branch, Civil Law Division of the Office of the Judge Advocate General.

- (5) The Commandant or the District Legal Officer of the naval district within which the claims arose, if the combined liquidated and known potential claims of all possible claimants for the property damage arising from the accident or incident do not exceed a total amount of \$1,000 and there are no known possible claims in any amount for either personal injury or death as a result of the accident or incident.
- (6) The Legal Officer, U. S. Naval Base, Newport, Rhode Island, and the Legal Officer, U. S. Naval Submarine Base, New London, Connecticut, for claims accruing to operators of fishing vessels for damage to nets, booms, lines, and other trawler impediment as a result of contact with naval ordnance (mines and torpedoes) if the combined liquidated and known potential claims of all possible claimants for property damage arising from the accident or incident do not exceed a total amount of \$1,000 and there are no known possible claims in any amount for either personal injury or death as a result of the accident or inci-
- (b) Claims cognizable under the act of December 28, 1945, and §§ 750.17-750.27 shall be approved or disapproved, in whole or in part by any of the following, all of whom are designated to administer those provisions of law for the Navv.
  - (1) The Judge Advocate General.
- (2) The Assistant Judge Advocate General.
- (3) The Director, Civil Law Division of the Office of the Judge Advocate General.
- (4) The Head, General Claims Branch, Civil Law Divison of the Office Claimsof the Judge Advocate General.
- (5) The Commandant or the District Legal Officer of the naval district within which the claims arose, if the combined liquidated and known potential claims of all possible claimants for property damage arising from the accident or incident do not exceed a total amount of \$1,000 and there are no known possible claims in any amount for either personal mjury or death as a result of the accident or
- (6) Foreign Claims Commissions to the extent authorized by Department of Defense Notices of January 28, 1955 (20 F R. 775) and December 11, 1953 (18 F R. 8513) (See § 753.33 of the Foreign Claims Regulations.)
- (c) Claims cognizable under the act of July 11, 1919, as amended, and §§ 750.-28-750.29 shall be approved or disapproved by the Secretary of the Navy.
- (d) Subject to the provisions of Title 28, United States Code, § 1346 (b) and §§ 750.8-750.16 respecting civil action against the United States, and subject to the provisions of § 750.43, with regard to appeal, any award or determination of the Secretary of the Navy or his designees, under the provisions governing

-administrative settlement of federal tort claims under Title 28, United States Code, is final and conclusive upon all officers of the Government, except when procured by means of fraud. Notwithstanding any other provision of law to the contrary, any settlement made by the Secretary of the Navy under the authority of the act of December 28, 1945, and §§ 750.17–750.27, or, subject to the provisions of § 750.43 with regard to appeal to the Secretary of the Navy, by his designees for the purpose, is final and conclusive for all purposes.

18. Section 750.43 is revised to read as follows:

§ 750.43 Notice and appeal. (a) The claimant shall, in every case, be notified by the approving or disapproving authority, in writing, of the action taken on his claim.

(b) When a claim has been disapproved, either in whole or in part, the claimant may, within thirty days after receipt of the aforementioned notification, appeal to the Secretary of the Navy (Judge Advocate General), stating the grounds relied upon for such appeal. Such appeals, in cases of claims considered under the act of December 28, 1945, shall be decided by the Secretary of the Navy. In cases of claims considered under Title 28, United States Code, the appeal, except in cases originally processed and disapproved by The Judge Advocate General, may be decided either by the Secretary of the Navy or The Judge Advocate General. In cases originally processed and disapproved by The Judge Advocate General, the appeal shall be decided by the Secretary of the

19. Section 750.44 is revised to read as follows:

§ 750.44 Settlement agreement. (a) In cases in which the claim is approved in the full amount claimed, no settlement agreement, other than the agreement incorporated in the claim for damage or injury Standard Form #95, is necessary. In cases in which the claim is being approved for a lesser amount than that claimed, no payment will be made until the claimant has indicated in writing his willingness to accept such amount in full satisfaction and final settlement of the claim.

(b) The acceptance by the claimant of any award or settlement made by the Secretary of the Navy, or his designees for the purpose, in pursuance of the authority granted by statute and the regulations in this part, or of any award, compromise, or settlement made by the Attorney General, is final and conclusive upon the claimant and constitutes a complete release by the claimant of any claim against the United States by reason of the same subject matter. The acceptance by the claimant of any award, compromise, or settlement made under the provisions governing the administrative settlement of federal tort claims under Title 28, United States Code, or the civil action provisions of Title 28, United States Code, section 1346 (b) and §§ 750.1-750:16 also constitutes a complete release by the claimant of any

claim against the employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

20. Section 750.45 is revised to read as follows:

§ 750.45 Payment of claims. Claims approved by the Secretary of the Navy, the Judge Advocate General, the Assistant Judge Advocate Gareral, the Director of the Civil Law Division of the Office of the Judge Advocate General, or the Head, General Claims Branch, Civil Law Division of the Office of the Judge Advocate General as provided in § 750.42 shall be forwarded to the U.S. Navy Regional Accounts Office, Washington 25, D. C., for payment from appropriations designated for that purpose. Claims approved by the Legal Officer, U.S. Naval Base, Newport, Rhode Island, the Legal Officer, U. S. Naval Submarine Base, New London, Connecticut, or a Commandant or District Legal Officer as provided in § 750.42 shall be forwarded to such disbursing officer as may be designated by the Bureau of Supplies and Accounts for payment from appropriations designated for that purpose.

(41 Stat. 132, sec. 1, 59 Stat. 662, 62 Stat. 982; 34 U. S. C. 600, 31 U. S. C. 223d, 28 U. S. C. 2671-2680)

21. Section 751.20 is revised to read as follows:

§ 751.20 Form of claim. Claim will be submitted by presenting a detailed statement in triplicate, signed by or on behalf of the claimant, on form NAVEXOS 2662B, except when such forms are not available through normal distribution channels, in which case a claim may be accepted on a form containing the information necessary to substantiate the claim. Attention is directed to the provisions of § 751.21 outlining specific types of evidence required in particular classes of claims: careful compliance with such requirements is essential to avoid delays resulting from the necessity of returning the claim for amplification.

22. Section 751.24 is revised to read as follows:

§ 751.24 Form of investigating ofcer's report. Report by the investigating officer (see § 751.23 (b)), will be submitted on form NAVEXOS 2662B, except when such form is not available through normal distribution channels, in which case the report should set forth substantially the information indicated by the

23. Section 751.27 (a) is revised to read as follows:

§ 751.27 Civilian personnel adjudicating authority—(a) Claims. The Judge Advocate General of the Navy, the Assistant Judge Advocate General of tho Navy, the Director, Civil Law Division, Office of the Judge Advocate General and the Head, General Claims Branch, Civil Law Division, Office of the Judge Advocate General, are hereby designated and authorized to consider, ascertain, adjust, and determine claims filed under the provisions of §§ 751.1 and

751.32 by civilian personnel of the Navy and Marine Corps.

(Sec. 2, 59 Stat. 662; 31 U. S. C. 222e)

24. The authority preceding § 753.1, is revised to read as follows:

AUTHORITY: §§ 753.1 to 753.33 issued under sec. 1, 55 Stat. 880, as amended; 31 U. S. C. 224d. Interpret or apply 57 Stat. 372, as amended, 61 Stat. 500, as amended, 63 Stat. 1006; 31 U. S. C. 223b to 223e, 5 U. S. C. 171a, 31 U. S. C. 2241-2 to 2241-5.

25. The note, preceding § 753.1, is revised to read as follows:

Note: §§ 753.1 to 753.33 are also contained in the 1955 Naval Supplement to the Manual for Courts-Martial, United States, 1951.

26. Section 753.18 is revised to read as follows:

§ 753.18 Claims for damage occasioned by naval vessels. Unless specifically authorized by the Judge Advocate General in each case, the Foreign Claims Commission shall not assume jurisdiction or proceed to hear any claim for damage occasioned by a naval vessel. This provision applies to claims for damage caused to land structures as well as claims of an admiralty nature. The occurrence of any such damage, if brought to the attention of a claims commission, shall be reported immediately to the Judge Advocate General, attention of the Admiralty Division.

27. Section 753.21 is revised to read as follows:

§ 753.21 No formal procedure prescribed. No formal procedure for the conduct of an investigation of a claim is prescribed. However, the instructions governing the procedure of courts of inquiry and boards of investigation by the 1955 Naval Supplement to the Manual for Courts Martial, United States, 1951, should be followed in principle as a guide. A transcript of the testimony of witnesses is not required and only the substance of statements of witnesses need be recorded. However, it is desirable that signed statements of material witnesses be made a part of the record. The formal rules of evidence need not be adhered to and any evidence, regardless of its form, which the commission deems material may be received and evaluated.

28. Section 753.24 is revised to read as follows:

§ 753.24 Payments. Claims authorized to be paid hereunder will be forwarded after approval to the nearest Navy or Marine Corps disbursing officer in the country concerned for preparation and payment of the public voucher.

29. Section 753.30 is added to read as follows:

§ 753.30 Claims arising in specified foreign countries. The United States has ratified the NATO Status of Forces Agreement and has entered into, and contemplates entering into, other similar agreements with foreign countries. Article VIII of the NATO Status of Forces Agreement and certain provisions of other agreements are inconsistent with the continued unrestricted use of the Foreign Claims Act and its imple-

menting regulations in certain countries. It is, therefore, directed that the directives of the cognizant area commander be consulted and that claims not be referred to foreign claims commissions until it has been determined that such action is not inconsistent with the provisions of the aforementioned agreements and their implementing directives. Department of Defense Notice of January 28, 1955 (20 F. R. 775) directs that, where a single service has been or may be assigned responsibility for claims in a particular country or area, all reimbursements, settlements or payments that may be made in such country or area under the Foreign Claims Act of January 2, 1942, as amended, and the Military Claims Act of July 3, 1943, as amended, shall be made solely by that service. In countries in which the NATO Status of Forces Agreement or a similar agreement is in force, accidents which may give rise to a tort claim against the United States arising from acts or omissions of naval personnel, or members of the civilian component of the naval cervice, including claims for death or personal injury resulting from the navigation or operation of a ship, or in the loading, carriage or discharge of its cargo, will be investigated and reports will be made in accordance with the instructions promulgated by the cognizant naval commander.

30. Section 753.31 is added to read as ollows:

§ 753.31 Crossservicing. Department of Defense Notice of January 28, 1955 (20 F R. 775) provides that any claim, which may be settled under the provisions of the Foreign Claims Act of January 2, 1942, as amended, and the Military Claims Act of July 3, 1943, as amended, may be settled retroactively to August 1, 1953 by any commission or commissions appointed by the Army, Air Force, Navy or Marine Corps under the provisions thereof, without regard to the service of the military tortfeasor. See § 753.30 in regard to areas in which cross-servicing is mandatory.

31. Section 753.32 is added to read as follows:

§ 753.32 Settlement of claims arising from the activities of Military Assistance Advisory Groups. Department of Defense Notice of December 11, 1953 (18 F. R. 8513) directs that claims against the United States, except claims comizable by foreign governments under the provisions of existing treaties and agreements, which have arisen since January 30, 1953, or may hereafter arise from the activities of Military Assistance Advisory Groups, or of the military personnel or civilian employees thereof which are otherwise cognizable under such acts, shall be settled in accordance with the provisions of the Foreign Claims Act (Act of January 2, 1942, 55 Stat. 880) as amended, or of the Act of July 3, 1943, (57 Stat. 372), as amended, and the regulations of the responsible Department implementing such acts. In accordance with this directive, foreign claims commissions of the Navy shall be responsible for the processing and settlement of such claims arising in foreign countries in which the Navy has been made responsible for the processing of claims under the NATO Status of Forces Agreement or other pertinent treaties or agreements in areas in which the Navy has the predominant interest.

32. Section 753.33 is added to read as follows:

§ 753.33 Settlement authority under the act of December 28, 1945. Department of Defense Notice of January 28, 1955 (20 F. R. 775) provides that any claims, whether Army, Air Force, Navy or Marine Corps, which may be settled under the provisions of the Foreign Claims Act of January 2, 1942, as amended, or of the act of July 3, 1943, as amended, may be settled retroactively to August 1, 1953 by any commission or commissions appointed under the regulations of any of the above-listed services. without regard to the service of the military tortleasor. Department of Defense Notice of December 11, 1953 (18 F. R. 8513) directs settlement of claims in certain instances arising from the activities of Military Assistance Advisory Groups, or of the military personnel or civilian employees thereof which are otherwise cognizable under the act of July 3, 1943, as amended. The Act of July 3, 1943 was made applicable to the Navy by the first section of the act of December 28, 1945 (59 Stat. 662; 31 U. S. C. 223d). See § 753.30 in regard to areas in which cross-servicing is mandatory. The regulations implementing this statutory settlement authority are contained in the Navy General Claums Regulations (Part 750 of this chapter) and will be followed, as far as applicable, in the settlement of claims under this act by foreign claims commissions.

By direction of the Secretary of the Navy.

Dated: December 19, 1950.

IRA H. Norm,
Rear Admiral, U.S. Navy,
Judge Advocate General of the Navy.

[F. R. Doc. 65-10310; Filed, Dec. 27, 1955; 8:45 a.m.]

# TITLE 46—SHIPPING

Chapter I—Coast Guard, Department of the Treasury

[CGFR 55-52]

MISCELLANEOUS AMENDMENTS TO CHAPTER

The editorial changes and corrections in this document are to bring the regulations and the authority therefor up to date, as well as to correct a Coast Guard Document CGFR 55-1 published in the FIDERIAL REGISTEN March 25, 1955. The major change affects the authority for certain regulations governing inspection of foreign vessels which may be acquired by purchase or requisition by the Secretary of Commerce. In this respect section 5 of the act of June 6, 1941, as amended (sec. 5, 55 Stat. 244, 245; 50 U. S. C. App. 1275), has expired. This authority was replaced by section 3 of the act of August 9, 1954 (sec. 3, 68 Stat. 675, 50 U. S. C. 198) The other changes

correct the title "Merchant Marine Investigating Unit" to "Investigating Section" in 46 CFR 1.01, revise Table 75.20-15 (s), regarding lifeboat sails for passenger vessels, in 46 CFR 75.20-15, to be the same as for cargo and miscellaneous vessels; and in 46 CFR 75.05-1 and 94.05-1 correct the title of the pamphlet CG-190 from "Equipment Lists for Merchant Vessels" to "Equipment Lists"

Because the amendments in this document are editorial in nature it is hereby found that compliance with the Admistrative Procedure Act respecting notice of proposed rule making, public rule making procedures thereon, and effective date requirements thereof, is unnecessary.

By virtue of the authority vested in me as Commandant, United States Coast Guard, by Treasury Department Order No. 120, dated July 31, 1950 (15 F. R. 6521), Treasury Department Order 167-9, dated August 3, 1954 (19 F. R. 5915) and Treasury Department Order No. 167-14, dated November 26, 1954 (19 F. R. 8026) to promulgate regulations in accordance with the statutes cited with the regulations below, the following amendments in this document are prescribed and shall become effective upon the date of publication of this document in the Federal Register:

# Subchapter A—Procedures Applicable to the Public

## PART 1-GENERAL COURSE AND METHODS

Section 1.01 (c), regarding general flow of functions, is amended by changing the title "Merchant Marine Investigating Unit" to "Investigating Section."

(R. S. 4405, as amended, 4462, as amended; 46 U. S. C. 375, 416. Interpret or apply R. S. 4403, as amended, sec. 2, 23 Stat. 118, as amended, secs. 1, 2, 49 Stat. 1544, as amended, sec. 3, 68 Stat. 675; 46 U. S. C. 372, 2, 367, 50 U. S. C. 198; E. O. 10402, 17 F. R. 9917; 3 CFR, 1952 Supp.)

## PART 2-VESSEL INSPECTIONS

The regulations in this part also interpret or apply sec. 3, 68 Stat. 675, 50 U. S. C. 198.

## PART 3-MERCHANT MARINE PERSONNEL.

The regulations in this part also interpret or apply sec. 3, 68 Stat. 675, 50 U. S. C. 198.

Section 3.01–1, regarding applications for licenses or documents, is amended by changing the phrase "50 U. S. C. App. 1275, and Public Law 525, 80th Congress, 2d Session" to "50 U. S. C. 198"

#### PART 4—INVESTIGATIONS AND HEARINGS

The authority for the regulations in this part is amended by changing a reference therein from "54 Stat. 244" to "sec. 3, 68 Stat. 675" and from "50 U. S. C. App. 1275" to "50 U. S. C. 198"

# Subchapter B—Merchant Marine Officers and Seamen

PART 10—LICENSING OF OFFICERS AND MO-TORBOAT OPERATORS AND REGISTRATION OF STAFF OFFICERS

The authority for the regulations in this part is revised to read as follows:

AUTHORITY: The regulations are issued under R. S. 4405, as amended, 4462, as amended; 46 U. S. C. 375, 416. Interpret or apply R. S. 4417a, as amended, 4426, as amended, 4427, as amended, 4438—4442, as amended, 4445, as amended, 4447, as amended, sec. 2, 29 Stat. 188, as amended, sec. 1, 34 Stat. 1411, as amended, secs. 1, 2, 49 Stat. 1544, as amended, sec. 7, 53 Stat. 1147, as amended, secs. 7, 17, 54 Stat. 165; 166, as amended, sec. 3, 54 Stat. 346, as amended, sec. 2, 68 Stat. 484, and sec. 3, 68 Stat. 675; 46 U. S. C. 391a, 404, 405, 224, 224a, 226, 228, 229, 214, 231, 233, 225, 237, 367, 247, 526f, 526p, 1133, 710c, and 50 U. S. C.

Section 10.01-5 (b) regarding authority for regulations, is amended by changing certain references from "sec. 5, 55 Stat. 244, 245" to "sec. 3, 68 Stat. 675" and from "50 U. S. C. App. 1275" to "50 U. S. C. 198"

#### PART 12—CERTIFICATION OF SEAMAN

The authority for the regulations in this part is revised to read as follows:

AUTHORITY: The regulations are issued under R. S. 4405, as amended, 4462, as amended, 46 U. S. C. 375, 416. Interpret or apply R. S. 4417a, as amended, 4488, as amended, 4551, as amended, sec. 13, 38 Stat. 1169, as amended, secs. 1, 2, 49 Stat. 1544, 1545, as amended, sec. 7, 49 Stat. 1936, as amended, sec. 3, 54 Stat. 346, sec. 2, 68 Stat. 484, sec. 3, 68 Stat. 675; 46 U. S. C. 391a, 481, 643, 672, 367, 689, 1133, 710c, 50 U. S. C. 198. Other statutory provisions interpreted or applied are cited to the text in parenthesis.

Section 12.01-5, regarding authority for regulations, is amended by changing references in paragraphs (b) (c) and (d) from "sec. 5, 55 Stat. 244, 245, as amended" to "sec. 3, 68 Stat. 675" and from "50 U. S. C. App. 1275" to "50 U. S. C. 198"

# Subchapter D—Tank Vessels PART 30—GENERAL PROVISIONS

The authority for the regulations in this part is revised to read as follows:

AUTHORITY: The regulations are issued under R. S. 4405, as amended, 4417a, as amended, 4462, as amended; 46 U. S. C. 375, 391a, 416. Interpret or apply sec. 3, 68 Stat. 675; 50 U. S. C. 198; E. O. 10402, 17 F. R. 9917; 3 CFR, 1952 Supp.

Section 30.01-1, regarding basis and purpose of regulations—TB/ALL, is amended by changing references from "sec. 5 (e) of the Act of June 6, 1941" to "sec. 3 (c) of the Act of August 9, 1954" and from "50 U. S. C. 1275" to "50 U. S. C. 198"

# PART 31-INSPECTION AND CERTIFICATION

The authority for the regulations in this part is revised by changing statute references from "sec. 5, 55 Stat. 244, 245, as amended" to "sec. 3, 68 Stat. 675" and from "50 U. S. C. App. 1275" to "50 U. S. C. 198"

#### PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

The authority for the regulations issued in this part is amended by revising references from "sec. 5, 55 Stat. 244, 245, as amended" to "sec. 3, 68 Stat. 675" and from "50 U. S. C. App. 1275" to "50 U. S. C. 198"

#### PART 33—LIFESAVING APPLIANCES

The authority for the regulations issued in this part is revised by changing references from "sec. 5, 55 Stat. 244, 245, as amended" to "sec. 3, 68 Stat. 675" and from "50 U. S. C. App. 1275" to "50 U. S. C. 198"

#### PART 34—FIRE-FIGHTING EQUIPMENT

The authority for the regulations issued in this part is revised by changing references from "sec. 5, 55 Stat. 244, 245, as amended" to "sec. 3, 68 Stat. 675" and from "50 U. S. C. App. 1275" to "50 U.S. C. 198"

## PART 35-OPERATIONS

The authority for the regulations in this part is revised by changing references from "sec. 5, 55 Stat. 244, 245, as amended" to "sec. 3, 68 Stat. 675" and from "50 U. S. C. App. 1275" to "50 U. S. C. 198"

#### Subchapter E-Load Unes

PART 46—SUBDIVISION LOAD LINES FOR PASSENGER VESSELS

The authority for the regulations in this part is revised to read as follows:

AUTHORITY: The regulations in this part are issued under sec. 2, 45 Stat. 1493, as amended, sec. 2, 49 Stat. 888, as amended; 46 U. S. C. 85a, 88a. Interpret or apply R. S. 4490, as amended, sec. 3, 24 Stat. 120, as amended, 41 Stat. 305, as amended, sec. 5, 49 Stat. 1384, as amended, secs. 1, 2, 49 Stat. 1544, as amended, sec. 3, 54 Stat. 346, as amended, sec. 3, 68 Stat. 675; 46 U. S. C. 492, 483, 363, 369, 367, 1333, 50 U. S. C. 198; E. O. 10402, 17 F. R. 9917; 3 CFR, 1952 Supp.

Section 46.01-5, regarding authority, is amended by changing references from "sec. 5, 55 Stat. 244, 245, as amended" to "sec. 3, 68 Stat. 675" and from "50 U. S. C. App. 1275" to "50 U. S. C. 198"

# Subchaptor F---Marine Engineering

The authority for the regulations in Parts 50 to 61, inclusive, is revised by changing references from "sec. 5, 55 Stat. 244, 245, as amended" to "sec. 3, 68 Stat. 675" and from "50 U. S. C. App. 1275" to "50 U. S. C. 198"

#### Subchapter G—Marine Engineering Installations Contracted for Prior to July 1, 1935

The authority for the regulations in Parts 66 to 69, inclusive, is revised by changing references from "sec. 5, 55 Stat. 244, 245, as amended" to "sec. 3, 68 Stat. 675" and from "50 U. S. C. 1275" to "50 U. S. C. 198"

## PART 66-GENERAL

Section 66.01-1 (b), regarding authority for regulations, is amended by changing references from "sec. 5, 55 Stat. 244, 245" to "sec. 3, 68 Stat. 675" and from "50 U. S. C. App. 198" to "50 U. S. C. 198"

# Subcaptor H—Passanger Vessels

## PART 70-GENERAL PROVISIONS

The authority for the regulations in this part is revised to read as follows:

AUTHORITY: The regulations in this part are issued under R. S. 4405, as amended, 4462, as amended; 46 U. S. C. 375, 416. Interpret or apply R. S. 4426, as amended, sec. 5, 49 Stat. 1384, as amended, secs. 1, 2, 49 Stat. 1544, as amended, sec. 17, 54 Stat. 166, as amended, sec. 3, 54 Stat. 346, as amended, sec. 2, 54 Stat. 1028, as amended, and sec. 3, 68 Stat. 675; 46 U. S. C. 404, 369, 367, 526p, 1333, 463a, 50 U. S. C. 198; E. O. 10402, 17 F. R. 9917; 3 CFR, 1952 Supp.

Section 70.01–10, regarding authority for regulations, as amended by changing references in paragraphs (b) to (i) inclusive, from "sec. 5, 55 Stat. 244, 245" to "sec. 3, 68 Stat. 675" and from "50 U. S. C. App. 1275" to "50 U. S. C. 198"

Section 70.30-1, regarding vessels acquired or documented under the act of June 6, 1941, is amended by changing the references to the law in the heading from "act of June 6, 1941" to "act of August 9, 1954" and in paragraph (a) from "act of June 6, 1941, as amended (sec. 5, 55 Stat. 244, 245; 50 U. S. C. App. 1275)" to "act of August 9, 1954 (sec. 3, 68 Stat. 675; 50 U. S. C. 198)"

#### PART 71-INSPECTION AND CERTIFICATION

The authority for the regulations in this part is revised by changing references from "sec. 5, 55 Stat. 244, 245" to "sec. 3, 68 Stat. 675" and from "50 U. S. C. App. 1275" to "50 U. S. C. 198"

# Part 72—Construction and Arrangement

The authority for the regulations in this part is revised by changing references from "sec. 5, 55 Stat. 244, 245" to "sec. 3, 68 Stat. 675" and from "50 U. S. C. App. 1275" to "50 U. S. C. 198"

#### PART 73—WATERTIGHT SUBDIVISION

The authority for the regulations in this part is revised by changing references from "sec. 5, 55 Stat. 244, 245" to "sec. 3, 68 Stat. 675" and from "50 U. S. C. App. 1275" to "50 U. S. C. 198"

## PART 74—STABILITY

The authority for the regulations in this part is revised by changing references from "sec. 5, 55 Stat. 244, 245" to "sec. 3, 68 Stat. 675" and from "50 U. S. C. App. 1275" to "50 U. S. C. 198"

#### PART 75—LIFESAVING EQUIPMENT

The authority for the regulations in this part is revised to read as follows:

AUTHORITY: The regulations in this part are issued under R. S. 4405, as amended, 4462, as amended; 46 U. S. C. 375, 416. Interpret or apply R. S. 4417, as amended, 4418, as amended, 4426, as amended, 4481, as amended, 4481, as amended, 4491, as amended, 4488, as amended, 4491, as amended, secs. 1, 2, 49 Stat. 1544, as amended, secs. 1, 2, 49 Stat. 1544, as amended, sec. 17, 54 Stat. 166, as amended, sec. 3, 68 Stat. 675; 46 U. S. C. 391, 392, 404, 474, 475, 481, 489, 367, 526p, 1333, 50 U. S. C. 198; E. O. 10402, 17 F. R. 9917; 3 CFE, 1952 Supp.

Section 75.05-1 (a) regarding equipment of an approved type, is amended by revising the title of the pamphlet CG-190 from "Equipment Lists for Merchant Vessels" to "Equipment Lists"

The Table 75.20-15 (s) in section 75.20-15 (s) is amended by changing the fifth number in the eleventh column for the diameter of masts 16 feet and 6 inches long for lifeboats over 23 feet and not over 25 feet in length from "3%" to "4" inches and by inserting a reference to footnote "(2)" in the last line of the second column opposite "31", length of lifeboat in feet.

#### PART 76-FIRE PROTECTION EQUIPMENT

The authority for the regulations in this part is revised by changing references from "sec. 5, 55 Stat. 244, 245" to "sec. 3, 68 Stat. 675" and from "50 U. S. C. 193"

PART 77—VESSEL CONTROL AND MISCIL-LANEOUS SYSTEMS AND EQUIPMENT

The authority for the regulations in this part is revised by changing references from "sec. 5, 55 Stat. 244, 245" to "sec. 3, 68 Stat. 675" and from "50 U. S. C. 198"

#### PART 78—OPERATIONS

The authority for the regulations in this part is revised by changing references from "sec. 5, 55 Stat. 244, 245" to "sec. 3, 68 Stat. 675" and from "50 U. S. C. 193"

Subchapter I—Cargo and Miscellaneous Vessels

## PART 90-GENERAL PROVISIONS

The authority for the regulations in this part is revised to read as follows:

AUTHORITY: The regulations in this part are issued under R. S. 4405, as amended, 4502, as amended, 4502, as amended, 4502, as amended, ecc. 1, 2, 49 Stat. 1544, as amended, ecc. 17, 54 Stat. 166, as amended, ecc. 2, 54 Stat. 1023, es amended, ecc. 3, 63 Stat. 675; 46 U. S. C. 404, 367, 520p, 463a, 50 U. S. C. 193; C. O. 10402, 17 F. R. 9917, 3 CFR, 1952 Supp.

Section 90.01-10, regarding authority for regulations, is amended by revising in paragraphs (b) to (h), inclusive, references from "sec. 5, 55 Stat. 244, 245" to "sec. 3, 68 Stat. 675" and from "50 U. S. C. App. 1275" to "50 U. S. C. 198"

Section 90.30-1, regarding vessels acquired or documented under the Act of June 6, 1941, is amended by changing the references to the law in the heading from "Act of June 6, 1941" to "Act of August 9, 1954" and in paragraph (a) from "Act of June 6, 1941, as amended (sec. 5, 55 Stat. 244, 245; 50 U. S. C. App. 1275)" to "Act of August 9, 1954 (sec. 3, 68 Stat. 675; 50 U. S. C. 198)"

## PART 91-INSPECTION AND CERTIFICATION

The authority for the regulations in this part is revised by changing references from "sec. 5, 55 Stat. 244, 245" to "sec. 3, 68 Stat. 675" and from "50 U. S. C. App. 1275" to "50 U. S. C. 193"

# PART 92—CONSTRUCTION AND ARRANGEMENT

The authority for the regulations in this part is revised by changing references from "sec. 5, 55 Stat. 244, 245" to

"sec. 3, 68 Stat. 675" and from "50 U.S. C. App. 1275" to "50 U.S. C. 193"

#### PART 93-STABILITY

The authority for the regulations in this part is revised by changing references from "sec. 5, 55 Stat. 244, 245" to "sec. 3, 68 Stat. 675" and from "50 U.S. C. App. 1275" to "50 U.S. C. 198"

#### Part 94—Lipesaving Equipment

The authority for the regulations in this part is revised to read as follows:

Section 94.05–1 (a), regarding equipment of an approved type, is amended by changing the title of the pamphlet CG–190 from "Equipment Lists for Merchant Vessels" to "Equipment Lists."

#### PART 95—FIRE PROTECTION EQUIPMENT

The authority for the regulations in this part is revised by changing references from "sec. 5, 55 Stat. 244, 245" to "sec. 3, 63 Stat. 675" and from "50 U.S. C. App. 1275" to "50 U.S. C. 198"

PART 96—VESSEL CONTROL AND MISCEL-LANEOUS SYSTEMS AND EQUIPMENT

The authority for the regulations in this part is revised by changing references from "sec. 5, 55 Stat. 244, 245" to "sec. 3, 68 Stat. 675" and from "50 U.S. C. App. 1275" to "50 U.S. C. 198"

# Part 97—Operations

The authority for the regulations in this part is revised by changing references from "sec. 5, 55 Stat. 244, 245" to "sec. 3, 63 Stat. 675" and from "50 U.S. C. App. 1275" to "50 U.S. C. 198"

# Subchapter J—Electrical Engineering Part 110—General Provisions

The authority for the regulations in this part is revised to read as follows:

AUTHORITY: The regulations are issued under R. S. \$405, as amended, 4462, as amended, 460 U. S. C. 375, 416. Interpret or apply R. S. 4333, as amended, 4400, as amended, 4417, as amended, 4417, as amended, 4421, as amended, 4426, as amended, 4421, as amended, 4426, as amended, 4433, as amended, 4433, as amended, ecc. 10, 35 Stat. 423, as amended, 41 Stat. 335, as amended, ecc. 5, 49 Stat. 1324, as amended, ecc. 1, 2, 49 Stat. 1544, as amended, sec. 3, 54 Stat. 346, as amended, ecc. 3, 54 Stat. 1022, as amended, ecc. 3, 63 Stat. 675; 46 U. S. C. 361, 362, 391, 391a, 392, 393, 494, 405, 411, 425, 369, 395, 363, 369, 367, 1353, 463a, 50 U. S. C. 193; E. O. 10492, 17 F. E. 9917; 3 CFR, 1952 Supp.

Section 110.25-1, regarding vessels acquired or documented under the Act of June 6, 1941, is amended by changing the

references to the law in the heading from "Act of June 6, 1941" to "Act of August 9, 1954" and in paragraph (a) by changing the reference from "Act of June 6, 1941" to "Act of August 9, 1954 (sec. 3, 68 Stat. 675, 50 U. S. C. 198)"

# PART 111—ELECTRICAL SYSTEM; GENERAL REQUIREMENTS

The authority for the regulations in this part is revised to read as follows:

AUTHORITY; The regulations are issued under R. S. 4405, as amended, 4462, as amended, 46 U. S. C. 375, 416. Interpret or apply R. S. 4399, as amended, 4400, as amended, 4417, as amended, 4417a, as amended, 4418, as amended, 4427, as amended, 4427, as amended, 4423, as amended, 4427, as amended, sec. 14, 29 Stat. 690, as amended, sec. 10, 35 Stat. 428, as amended, 41 Stat. 305, as amended, sec. 5, 49 Stat. 1384, as amended, secs. 1, 2, 49 Stat. 1544, as amended, sec. 3, 54 Stat. 346, as amended, sec. 2, 54 Stat. 1028, as amended, sec. 3, 68 Stat. 675; 46 U. S. C. 361, 362, 391, 391a, 392, 399, 404, 405, 411, 435, 366, 395, 363, 369, 367, 1333, 463a, 50 U. S. C. 198; E. O. 10402, 17 F. R. 9917; 3 CFR, 1952 Supp.

# PART 112—EMERGENCY LIGHTING AND POWER SYSTEM

The authority for the regulations in this part is revised to read as follows:

AUTHORITY: The regulations are issued under R. S. 4405, as amended, 4462, as amended, 46 U. S. C. 375, 416. Interpret or apply R. S. 4399, as amended, 4400, as amended, 4417, as amended, 4417a, as amended, 4421, as amended, 4425, as amended, 4423, as amended, 4433, as amended, 4453, as amended, sec. 14, 29 Stat. 690, as amended, sec. 10, 35 Stat. 428, as amended, 41 Stat. 305, as amended, sec. 5, 49 Stat. 1384, as amended, sec. 12, 29 Stat. 1544,—as amended, sec. 3, 54 Stat. 346, as amended, sec. 2, 54 Stat. 1028, as amended, sec. 3, 68 Stat. 675; 46 U. S. C. 361, 362, 391, 391a, 392, 399, 404, 405, 411, 435, 366, 395, 363, 369, 367, 1333, 463a, 50 U. S. C. 198; E. O. 10402, 17 F. R. 9917; 3 CFR, 1952 Supp.

# PART 113—COMMUNICATION AND ALARM SYSTEMS AND EQUIPMENT

The authority for the regulations in this part is revised to read as follows:

AUTHORITY: The regulations are issued under R. S. 4405, as amended, 4462, as amended,

46 U. S. C. 375, 416. Interpret or apply R. S. 4399, as amended, 4400, as amended, 4417, as amended, 4417, as amended, 4421, as amended, 4421, as amended, 4421, as amended, 4421, as amended, 4426, as amended, 4453, as amended, ec. 14, 29 Stat. 690, as amended, sec. 10, 35 Stat. 428, as amended, 41 Stat. 305, as amended, sec. 5, 49 Stat. 1384, as amended, secs. 1, 2, 49 Stat. 1544, as amended, sec. 3, 54 Stat. 346, as amended, sec. 2, 54 Stat. 1028, as amended, sec. 3, 68 Stat. 675; 46 U. S. C. 361, 362, 391, 391a, 392, 399, 404, 405, 411, 435, 366, 395, 363, 369, 367, 1333, 463a, 50 U. S. C. 198; E. O. 10402, 17 F. R. 9917; 3 CFR, 1952 Supp.

Subchapter K—Marine Investigations and Suspension and Revocation Proceedings

# PART 136—MARINE INVESTIGATION REGULATIONS

The authority for the regulations in this part is revised to read as follows:

AUTHORITY: The regulations are issued under R. S. 4405, as amended, 4462, as amended, 46 U. S. C. 375, 416. Interpret or apply R. S. 4450, as amended, secs. 1, 2, 49 Stat. 1544, sec. 3, 68 Stat. 198; 46 U. S. C. 239, 367, 50 U. S. C. 198.

Section 136.01-1 (b) regarding authority and scope of regulations, is amended by changing the reference from "50 U. S. C. 1275" to "50 U. S. C. 198"

# PART 137—SUSPENSION AND REVOCATION PROCEEDINGS

The authority for the regulations in this part is revised to read as follows:

AUTHORITY: The regulations are issued under R. S. 4405, as amended, 4462, as amended, 46 U. S. C. 375, 416. Interpret or apply R. S. 4450, as amended, secs. 1, 2, 49 Stat. 1544, as amended, secs. 1-12, 60 Stat. 237-244, secs. 1, 2, 68 Stat. 484, sec. 3, 68 Stat. 675; 46 U. S. C. 239, 367, 710c, 5 U. S. C. 1001-1011, 50 U. S. C. 198.

#### Subchapter M—Bulk Grain Cargoes

#### PART 144—LOADING AND STOWAGE OF GRAIN CARGOES

The authority for the regulations in this part is revised by changing references from "sec. 5, 55 Stat. 244, 245" to "sec. 3, 68 Stat. 675" and from "50 U.S. C. App. 1275" to "50 U.S. C. 198"

#### Subchapter P-Manning of Vossels

PART 157-MANNING REQUIREMENTS

Section 157.01-10 (b), regarding authority for regulations, is amended by revising references to the law from "eqo. 5, 55 Stat. 244, 245" to "sec. 3, 68 Stat. 675" and from "50 U. S. C. App. 1275" to "50 U. S. C. 198"

(R. S. 4405, as amended, 4462, as amendedly 46 U. S. C. 375, 416. Interpret or apply E. O. 10402, 17 F. R. 9917, 3 CFR, 1952 Supp.)

## Subchapter Q-Specifications

The authority notes for Subparts 160.001-160.003, 160.005, 160.006, 160.009-160.013, 160.015-160.018, 160.021-160.024, 160.026-160.028, 160.031-160.038, and 160.040-160.044 in Part 160, Part 161, Subparts 162.001, 162.012-162.014, 162.-016-162.018, 162.025, and 162.027 in Part 162, Part 163, and Subparts 164.001-164.003, 164.006, 164.008, and 164.009 in Part 164 are amended by changing references from "sec. 5, 55 Stat. 244, 245, as amended" to sec. 3, 68 Stat. 675" and from "50 U. S. C. App. 1275" to "50 U. S. C. 198"

#### Subchapter R-Nautical Schools

# PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

The authority for the regulations in this part is amended by changing references from "sec. 5, 55 Stat. 244" to "sec. 3, 68 Stat. 675" and from "50 U. S. C. App. 1275" to "50 U. S. C. 198"

#### CORRECTION OF PRIOR DOCUMENT

The Coast Guard Document CGFR 55-1 and Federal Register Document 55-2412 published in the Federal Register of March 25, 1955, is corrected by changing the section number "110.15-45" to "110.15-145" in paragraph 1 under Subpart 110.15 on page 1816.

Dated: December 16, 1955.

[SEAL] A. C. RICHMOND, Vice Admiral, U. S. Coast Guard, Commandant,

[F. R. Doc. 55-10353; Filed, Dec. 27, 1955; 8:45 a. m.]

# NOTICES

# FEDERAL POWER COMMISSION

[Projects Nos. 2148 and 2149]

PUGET SOUND POWER & LIGHT COMPANY AND PUBLIC UTILITY DISTRICT NO. 1 OF DOUGLAS COUNTY, WASHINGTON

NOTICE OF HEARING

DECEMBER 21, 1955.

On October 15, 1954, Puget Sound Power & Light Company, of Seattle, Washington (the Company) filed applications for rehearing of two Commission orders issued September 22, 1954: (1) Issuing a preliminary permit to Public Utility District No. 1 of Douglas County, Washington (District) for proposed Project No. 2149; and (2) denying the application for preliminary permit filed by the Company for conflicting proposed Project No. 2148 and denying the Company's petition to intervene in the proceeding on the application for Project No. 2149.

No hearing having been held upon either the Company's or the District's application for preliminary permit for the conflicting projects, the Commission, by order issued November 10, 1954. (1) Rescinded its order issued November 10, 1954, insofar as it denied the Company's petition to intervene in the proceeding on Project No. 2149; (2) granted the

Company's petition to intervene in the proceeding on Project No. 2149; and (3) granted the Company's above-mentioned applications for rehearing—the time and place for the rehearing to be fixed by further order of the Commission.

Take notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by section 308 (a) of the Federal Power Act and the Commission's rules of practice and procedure, a hearing will be held on February 6, 1056, at 10:00 a. m., e. s. t., in the hearing room of the Federal Power Commission, 441 C Street NW., Washington, D. C. concerning the matters involved in and the

issues presented by Puget Sound Fower & Light Company's applications for rehearing of the Commission's orders issued September 22, 1954 in the proceedings on Projects Nos. 2148 and 2149.

"Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL]

J. H. Gutride, Acting Secretary.

[F. R. Doc. 55-10351; Filed, Dec. 27, 1955; 8:45 a.m.]

# DEPARTMENT OF THE INTERIOR

#### Bureau of Indian Affairs

[Anadarko Area Office Redelegation Order 1, Amdt. 1]

OSAGE INDIAN FUNDS; HEADRIGHTS

REDELEGATION OF AUTHORITY

Order No. 1 (20 F. R. 2091) is amended by adding a new heading and two new sections to Part 2 to read as follows:

FUNCTIONS RELATING TO FUNDS AND FISCAL MATTERS

SEC. 2.265 Osage Indian funds. The approval of applications by Osage Indians under section 5 of the act of April 18, 1912 (37 Stat. 87), for the withdrawal of individual trust funds in the Treasury of the United States and quarterly prorata share payments of Osage tribal funds and interest on individual funds in the United States Treasury pursuant to the provisions of the act of June 28, 1906 (34 Stat. 544) as amended, or supplemented by the acts of February 27, 1925 (43 Stat. 1008) and June 24, 1938 (52 Stat. 1034)

SEC. 2.266 Osage headrights. The approval of transfers of Osage headrights belonging to any persons not an Indian by blood, pursuant to the provisions of the act of April 12, 1924 (43 Stat.

WILL J. PITNER,

Area Director.

Approved: December 21, 1955.

GLENN L. EMMONS, Commissioner

[F. R. Doc. 55-10349; Filed, Dec. 27, 1955; 8:45 a.m.]

# Bureau of Land Management

[Document 82]

ARIZONA

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

#### Correction

The land description in Federal Register Document 55-9832, appearing on page 9026, issue of Thursday, December 8, 1955, should read "Sec. 29: SE¼NE¼ SW¼, SW¼NW¼SE¼."

# CIVIL AERONAUTICS BOARD

[Docket No. 6630]

PACIFIC SERVICE MAIL RATE CASE

NOTICE OF PREHEARING CONFERENCE

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on January 12, 1956, at 10:00 a.m., e. s. t., in Room 5132, Commerce Building, Fourteenth Street and Constitution Avenue NW., Washington, D. C., before Examiner Edward T. Stodola.

Dated at Washington, D. C., December 22, 1955.

[SEAL]

Francis W. Brown, Chief Examiner

[F. R. Doc. 55-10361; Filed, Dec. 27, 1955; 8:47 a.m.]

[Docket No. 7517]

QUEEN CHARLOTTE AIRLINES LTD.

NOTICE OF POSTPONEMENT OF HEARING

In the matter of the application of Queen Charlotte Airlines Ltd. for an extension of foreign air carrier permit dated November 20, 1952 issued pursuant to section 402 of the Civil Aeronautics Act to perform operations of a regular nature between the terminal point Ketchikan, Alaska and the terminal Prince Rupert, British Columbia.

Notice is hereby given that the hearing in the above-entitled proceeding assigned for December 27, 1955, is postponed to January 16, 1956, at 2:00 p. m., in Room E-206, Temporary Building No. 5, Sixteenth Street and Constitution Avenue NW., Washington, D. C., before Examiner Joseph L. Fitzmaurice.

Dated at Washington, D. C., December 21, 1955.

[SEAL]

FRANCIS W BROWN, Chief Examiner

[F. R. Doc. 55–10359; Filed, Dec. 27, 1955; 8:47 a.m.]

[Docket No. 7518]

AIR ALIBULANCE SERVICE

NOTICE OF POSTPONEMENT OF HEARING

In the matter of the application of Air Ambulance Service, Department of Public Health, Government of Saskatchewan, for renewal of the foreign air carrier permit issued pursuant to section 402 of the Civil Aeronautics Act, to perform operations of a casual, occasional or infrequent nature, in common carriage, into the United States.

Notice is hereby given that the hearing in the above-entitled proceeding assigned for December 27, 1955, is postponed to January 16, 1956, at 3:00 p.m., in Room E-206, Temporary Building No. 5, Sixteenth Street and Constitution Avenue NW., Washington, D. C., before Examiner Joseph L. Fitzmaurice.

Dated at Washington, D. C., December 21, 1955.

[SEAL]

FRANCIS W. BROWN, Chief Examiner.

[F. R. Doc. 55-10360; Filed, Dec. 27, 1955; 8:47 a. m.]

# SMALL BUSINESS ADMINISTRA-TION

[Declaration of Disaster Area 79]

WASHINGTON

DECLARATION OF DISASTER AREA

Whereas it has been reported that beginning on or about November 3, 1955, because of the disastrous effects of flood, damage resulted to residences and business property located in certain areas in the State of Washington; and

Whereas the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected; and

Whereas after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act of 1953, as amended;

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 207 (b) (1) of the Small Business Act of 1953, as amended, may be received and considered by the Office below indicated from persons or firms whose property situated in Clallam County (including any areas adjacent to Clallam County) suffered damage or other destruction as a result of the catastrophe above referred to:

Small Business Administration Regional Office, 905 Second Avenue, Burke Building, Scattle, Washington.

2. No special field offices will be established at this time.

3. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to June 30, 1956.

Dated: December 12, 1955.

WEIDELL B. BARNES,
Administrator.

[F. R. Doc. 55-10356; Filed, Dec. 27, 1955; 8:46 a.m.]

# INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 22, 1955.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 31462: Trailer-on-flat-car service. Eric Railroad Company. Filed

10014 NOTICES

by Erie Railroad Company for interested rail carriers. Rates on various commodities in trailers loaded on railroad flat cars from New York, N. Y. to points in Wisconsin.

- Grounds for relief: Motor truck competition.

Tariff: Erie Railroad Company's tariff I. C. C. No. 21037.

FSA No. 31463: Vegetable oil shortening from Columbus, Ohio to East. Filed by H. R. Hinsch, Agent, for interested rail carriers. Rates on shortening, vegetable oil, carloads from Columbus, Ohio to points in Connecticut, Massachusetts, New York, Pennsylvania, and Rhode Island.

Grounds for relief: Carrier competition and circuity.

FSA No. 31464. Fence posts from the Southwest to Sioux Falls, S. Dak. Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on fence posts, carloads from points in the Southwest to Sioux Falls, S. Dak.

Grounds for relief: Short-line distance formula, circuity and truck competition.

Tariff: Supplement 90 to Agent Kratz-merr's I. C. C. 3954.

FSA No. 31465: Commodity rates from and to Scraggs, W Va. Filed by R. E. Boyle, Jr., Agent, for interested rail carriers. Rates on all commodities (other than coal and coke), carload and less-than-carload between Scraggs, W Va., on the one hand, and points in the United States and Canada, on the other.

Grounds for relief: Carrier competition, circuity, grouping, and establishment of a new station.

FSA No. 31466: Commodity rates from and to Looneys Creek, Va. Filed by R. E. Boyle, Jr., Agent, for interested rail carriers. Rates on all commodities (other than coal and coke), carload and less-than-carload between Looneys Creek, Va., on the one hand, and points in the United States and Canada, on the other.

Grounds for relief: Carrier competition, circuity, grouping, and establishment of a new station.

By the Commission.

[SEAL] HAROLD D. McCoy, Secretary.

[F. R. Doc. 55-10352; Filed, Dec. 27, 1956; 8:45 a.m.]